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OVERSIGHT OF THE MOTOR CARRIER ACT OF 1980

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

OVERSIGHT OF THE MOTOR CARRIER ACT OF 1980

SEPTEMBER 9, 1985

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OVERSIGHT OF THE MOTOR CARRIER ACT OF 1980

MONDAY, SEPTEMBER 9, 1985

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 9 a.m., in room SR-253, Russell Senate Office Building, Hon. Bob Packwood (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Karen Phillips, professional staff member; Steve Palmer, minority professional staff member; and Linda Morgan, minority staff counsel.

OPENING STATEMENT BY SENATOR PACKWOOD

Senator PACKWOOD. The hearing will come to order, please. This is the fifth—I hope the final—oversight hearing on the effects and the implementation of the Motor Carrier Act of 1980. That act directed annual hearings and we have had them ever since that time.

In my judgment, the 1980 act, by and large, has worked out as we hoped it would work out. There have been some problems that have crept up that we did not foresee at the time but, on balance, has the act been a success? I think it has.

Have trucking companies in some cases had difficult financial times? Yes. Some have gone bankrupt. Some have been merged under less than happy circumstances. Has there been difficulty in terms of employment in the unionized section of the trucking industry? Yes, there has.

Did we foresee the problems involved in State regulation of the trucking industry at the time we passed the act in 1980? I don't think we foresaw the great variety of innovative thinking that the States would come up with in terms of regulation, and I think that's a subject that we should fairly address and consider whether or not we want to preclude some of that.

Did we foresee, when we changed the weight and length requirements on trucks, the difficulty in implementation? I don't think we foresaw it being fought as hard as it has been fought in some States. And as far as I am concerned, as yet, that is not an unresolved problem but it is one we have been unsuccessful in carrying out as fully as I might hope.

Safety—the serious question is whether or not we have implemented as well or as fast the safety regulations we hoped would be

implemented. When we eased entry, we very clearly said that safety and insurance were two things that should be continued and should be continued very strongly. I do not think this committee has changed its mind on that, but there appears to be a bit of delay. I don't want to lay any blame at anybody's feet, but a delay in implementation of rather stringent safety regulations.

Cargo liability, clearly an issue. Insurance, sure. Pension withdrawal on multiemployer plans, clearly a problem. Should we create a motor carrier administration in the Department of Transportation—an issue.

But in retrospect, by and large, it has been a good act. I might say that the act was intended to make it easier for shippers to have a greater variety of options to choose from and a greater variety of prices, and from the shippers' standpoint, they seem quite satisfied.

From a rural standpoint, they seem quite satisfied, and if there is any group that will pick up complaints from rural constituents faster than elected officials, I don't know what group that is. We go home and we do not speak just to the Portland, OR, Rotary. We are in Bend, and Baker, and Pendleton, and those are small towns, and if they were lacking service we would hear it very quickly. It seems not to have happened.

The purpose of truck regulation, if there ever was a purpose, was to guarantee that shippers in this country had adequate service, both to get their products out to their customers and to receive products from those from whom they purchased.

The purpose of motor carrier regulation was never to guarantee a profit for regulated companies. That was not the purpose. During the heyday of regulation, we hoped that they would make a profit so that they could provide the services that we thought were critical to this country. If those services could be provided without regulation, that was the optimum. Neither was the purpose of regulation for this to be a quasi-public works employment program. If in the heyday of regulation, you had stability in the labor force, consistently increasing employment, very high wages, that was good. But that was not the point of regulation.

The point of regulation solely was to ensure adequate options for shippers and consumers. And if we can achieve that without regulation, so much the better.

Our first witness today is the Chairman of the Interstate Commerce Commission, Reese Taylor, and he is accompanied by two of his fellow Commissioners, Andy Strenio and Heather Gradison.

Mr. Chairman.

Mr. TAYLOR. Thank you, Mr. Chairman.

Senator PACKWOOD. Let me add, if I might, Reese. Over the weekend I spent about 8 hours reading the statements, and with the exception of Mr. Schneider's and Mr. Taylor's statement that I did not have, I have read all of your statements and I do not think a great many other members of the committee are going to show up this morning. So if you would put your statements in the record, they will be there in total. I have a great many questions I want to ask, and so would appreciate if you could hold yourself to the time limits of this committee. We do make an exception for the chairmen of major commissions and, of course, do for Chairman Taylor.

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY HEATHER GRADISON, VICE CHAIRMAN; ANDREW J. STRENIO, COMMISSIONER; BERNARD GAILLARD, DIRECTOR, OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE; HOWELL SPORN, DIRECTOR, MOTOR SECTION, OFFICE OF PROCEEDINGS; AND RON YOUNG, DIRECTOR, BUREAU OF ACCOUNTS

Mr. TAYLOR. Thank you, Mr. Chairman, and good morning. Let me begin, if I may, by introducing those at the table with me this morning. You have already introduced Vice Chairman Heather Gradison and my colleague, Commissioner Andrew Strenio.

On my immediate left is Bernard Gaillard, who is the Director of our Office of Compliance and Consumer Assistance; and on his left is Howell Sporn, who is the director of the motor section of our Office of Proceedings; and my far left is Ron Young, the director of our Bureau of Accounts.

I want to thank you for the opportunity to appear before this committee to present the views of the Commission with regard to the implementation and effects of the Motor Carrier Act of 1980. In addition to the full statement, appendixes are included which provide additional information on Commission proceedings, the latest earnings and traffic volume data for the Nation's largest motor carriers of property; and a list of studies concerning the impact of motor carrier deregulation on small communities.

During the past 5 years of oversight hearings, the Commission has testified that the motor carrier industry and the users of its services have responded favorably to the changes mandated by the Motor Carrier Act of 1980. The Commission reaffirms that view today.

To provide some detail, I will mention just a few recent highlights of what we have experienced under the act. Since the effective date of the act, July 1, 1980, 31,234 new carriers have received authority from the Commission. More than 5,901 grants of authority have been issued to new carriers since we last testified before you on September 18, 1984.

The total number of new certificates served since the act went into effect is 79,032. There was an increase of approximately 9,586 new certificates since the last Senate hearing. As expected, applications appear to have leveled off. As of July of this year, applications were being filed at a rate of approximately 1,137 each month.

Overall shipper satisfaction with the level of service remains high. Motor carrier independent rate actions published by rate bureaus for fiscal year 1985 are projected at 41,732 which reflects a 29.7 percent decline from the reported 59,426 independent actions during fiscal year 1984. These figures reveal a severe decline from fiscal years 1981, 1982, and 1983 when such activity was reported at 115,085, 180,829, and 230,184, respectively.

We attribute the drop in fiscal years 1984–85 to the fact that many motor carriers are publishing discount provisions in negotiated rates in their individual tariffs rather than in bureau publications. Increased revenues and tonnage hauled were reported by 100 of the largest motor carriers of the property for 12 months ending March 31, 1985, as compared to the same period of 1984.

Operating revenues increased 10.3 percent, to $17.6 billion, and revenue tons hauled rose 5.2 percent. Net carrier operating income decreased 8.7 percent to $717.1 million, and net income fell 11.2 percent to $413.2 million, due primarily to large declines reported by a few carriers. The combined operating ratio for these carriers rose to 95.9 percent from 95.1 percent. Rate of return on shareholders' equity decreased to 12.14 percent from 14.77 percent.

As discussed in more detail in the text in our statements, service levels remain good. Complaints continue at a relatively low level. The number of complaints is substantially below the pre-Motor Carrier Act levels. In comparing the first 10 months of fiscal year 1985 with the same period of fiscal year 1984, there has been a 17-percent decrease in the number of service-related complaints received against property carriers. As for service to small communities, research results have consistently indicated that overall motor carrier service to these communities has been at least as good under less economic regulation as before. Complaints about service to small communities have declined each year since 1980, and I have some more specific data on that if you would like it, Mr. Chairman, after we have completed the summary statement.

Senator PACKWOOD. I found the same thing as you have, as indicated in my opening statement.

Mr. TAYLOR. Your conclusion is absolutely correct. Based on 8 months actual data, projected motor carrier tariff filings for fiscal year 1985 are 1,380,000, up 25.4 percent from fiscal year 1984. This increase in filings is due primarily to increased pricing flexibility authorized by the Commission in Ex Parte No. MC–170, "Short Notice Effectiveness for Independently Filed Motor Carrier and Freight Forwarder Rates," which became effective on June 25, 1984.

In that proceeding, the Commission adopted final rules reducing the notice period for motor carrier and freight forwarder independent rate filings to 1 day's notice for reduced rates and 7 work days' notice for increased rates.

We also believe that this improved ability for accelerated response to changing market conditions has spurred the carriers to publish rates in their individual tariffs rather than through the more time-consuming process of bureau filings. This further explains the previously mentioned decline in independent actions published by rate bureaus. The Commission has also greatly simplified its rules governing the tariff format used by carriers.

The Commission has continued to facilitate intermodalism. In Ex Parte No. MC-156, "Applications for Motor Carrier Operating Authority by Railroads and Rail Affiliates," we removed the special circumstances requirement which had restricted grants of motor carrier authority to railroad affiliated motor carriers and, similarly, in Ex Parte No. 438, "Acquisitions of Motor Carriers by Railroads," we removed this same requirement which had restricted acquisitions of motor carrriers by railroads.

Last April, the Commission applied Ex Parte No. 438 in approving the Norfolk Southern Corp.'s acquisition of North American Van Lines, Inc. Although no final decision has been served, the Commission also voted in an open conference in Ex parte No. 230, Sub No. 6, "Improvement of TOFC/COFC Regulation," to exempt

from regulation truck service provided by rail affiliated motor carriers and other motor carriers as part of a continuous intermodal movement.

Turning to the trucking industry's financial performance, as I mentioned earlier, our most recent data reveal that the Nation's largest trucking companies reported increased revenues but declines in earnings for the first quarter of 1985 and the 12 months ending March 31, 1985, as compared to the same periods of the previous year. A copy of the report is attached as an appendix [1] to our full statement.

At your request, we have included in our statement data concerning organized labor and general trucking industry employment. Since the submittal of our full statement last Thursday, the Department of Labor, Bureau of Labor Statistics, has given us some corrected numbers with reference to table 1 appearing in our full statement. Because of their late corrections, the text of our statement on unemployment is actually no longer totally accurate. Consequently, what I would like to do, if I might at this moment, is to go through the corrected figures with you now, and I can do that in a hurry, year by year.

Turning to that chart for 1978, the unemployed number should be, instead of 68,000, 82,000; but the significant changes are over in the percentages. For 1978 under trucking service, the unemployment percentage rate, in lieu of 4.5 should have been 5.8. And the manufacturing figure of 5.5 is correct. That indicates that the trucking service unemployment rate in 1978 was actually higher rather than lower than the manufacturing rate.

Senator PACKWOOD. Now, are you on 1979?

Mr. TAYLOR. 1979, the 5.4 is correct. But the 5.5 should be changed to 5.6. So the manufacturing unemployment rate is a little higher.

For 1980, the figures are correct all the way across. And the trucking service is 8.2 and the manufacturing is 8.5, slightly higher in manufacturing.

In 1981, the figures remain the same; again, 8.1 versus 8.3 in manufacturing. And in 1982, they remain the same; 10.6 to 12.3. But they changed in 1983 and that changes the conclusion, because the trucking service rate is 10.6, but the manufacturing rate was 11.2. So, actually in 1983, the trucking service unemployment rate, according the Bureau of Labor Statistics' percentages, was less than the manufacturing rate of 11.2.

And in 1984, all the figures are the same except for the manufacturing rate which should have been 7.5 instead of 6.6, which means that there was not as great a disparity between the trucking service unemployment rate and the manufacturing rate.

For 1985, the second quarter, the 6.2 should be a 7.8 which actually means that for 1985, second quarter, the manufacturing percentage rate was higher than the trucking service unemployment rate. The figure there of 6.9 is correct.

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[1] The appendixes have been retained in the Committee files.

Senator PACKWOOD. The employment continued the same. By and large, with an occasional deviation, employment has gone up rather significantly in the trucking industry from 1978 onward.

Mr. TAYLOR. Right. All of those are correct except for the unemployed figure in 1978 which should have been 82,000 instead of 63,000. I really apologize for having to give you those corrections. We obtained those numbers from the Bureau of Labor Statistics, and later they gave us these corrected numbers. And it does change some of the conclusions that we had made.

I should add that labor costs have become an increasingly important influence on the success or failure of trucking firms. Many of the new motor carriers operating under the act are nonunion carriers, and price competition and discounting have made wages a critical factor in financial performance.

In the last year, the Commission has issued several significant decisions affecting motor carrier rate bureaus. The agency considered a petition for the withdrawal of antitrust immunity for collective ratemaking by motor carriers of property for rates on shipments under 1,000 pounds. In Ex Parte No. MC-172, "Withdrawal of Antitrust Immunity for Collective Ratemaking of Small Shipments," comments were filed by more than 60 parties and oral argument was held.

The Commission, in an open conference, decided that the record simply did not support the withdrawal of any antitrust immunity and denied the petition. A decision reflecting the Commission's vote and the discontinuance of the proceeding was served on December 13, 1984.

Recently, in Ex Parte No. 297, Sub No. 7, "Motor Carrier Rate Bureaus, Expansion of Collective Ratemaking Territory," the Commission considered whether rate bureaus may be permitted to expand the territorial scope of their collective ratemaking activities.

Initially, the Rocky Mountain Tariff Bureau, on April 21, 1983, petitioned the Commission for a declaratory order that the previously approved nationwide Government traffic ratemaking procedures also permit the collective discussion and publication of commercial traffic rates and charges on a nationwide basis. The Commission was unable to conclude, as an interpretive matter, that Rocky Mountain could collectively discuss and publish commercial traffic rates and charges on a nationwide basis, and, as a result, the petition was denied. However, the Commission decided to treat Rocky Mountain's petition as a request for expansion of its territorial authority, and we sought public comments on that proposal and directed Rocky Mountain to submit proposed amendments to its ratemaking agreement that would permit it to implement the proposal if adopted. Rocky Mountain complied and six other rate bureaus subsequently filed petitions seeking to engage in nationwide collective activity.

Because of the important issues raised, the Commission consolidated the petitions and held oral argument on December 4, 1984. At an open conference on May 21, 1985, the Commission voted to hold the matter in abeyance, pending approval or disapproval of the general commodity rate bureau agreements now before the

Commission. The Commission also voted to certify the record t Congress.

The actions the Commission has taken in other proceedings since we last testified before this committee are set forth as an appendix to our full statement.

The last matter I would like to address, just very briefly, concerns the Commission's enforcement policy. This policy sets out a high emphasis group of violations which receive the greatest allocation of enforcement resources by the Commission's Office of Compliance and Consumer Assistance. While the new policy accents the more serious violations, it also reflects a promarket approach which stresses marketplace solutions and deemphasizes reliance on Federal intervention whenever possible. Approximately 85 percent of the fiscal year 1985 enforcement caseload relates to the high emphasis enforcement categories.

The most prevalent type of case involves a lack of insurance by motor carriers. There appears to be a greater number of motor carriers having difficulty obtaining the necessary insurance coverage than in years past. This situation is being monitored and analyzed by OCCA and the Office of Proceedings at the Commission in order to ascertain, if they can, why this is happening and what can be done to alleviate the insurance problem confronting the motor carrier industry.

This concludes my summary remarks, Mr. Chairman, and if my colleagues have no additional comments—and they may have—I would like your permission, before taking your questions, to have Ron Young, the Director of our Bureau of Accounts, take just a couple of minutes to explain some financial exhibits and graphs which I believe probably should be made a part of the record of this hearing.

Senator PACKWOOD. Go right ahead.

Mr. TAYLOR. Do either of my colleagues have any comments?

Senator PACKWOOD. Commissioner Gradison.

Mrs. GRADISON. The only comment I would like to make, other than that I appreciate being here, is that the regulation of motor carriers by competitive transportation markets seems to adequately protect the public interest, as you stated in your opening remarks.

I would add that any future motor carrier deregulation legislation must deal directly with the lack of reasonable State uniformity in regulation, in State regulatory actions which seem to burden interstate commerce.

That is the statement I made last year, and it continues to be a problem.

Senator PACKWOOD. Commissioner Strenio.

Mr. STRENIO. Thank you, Mr. Chairman. In the interest of time, I do not have a prepared statement, but I would like to reiterate my support for the Commission testimony and for the statements that you and the Chairman and Vice Chairman have made, and thank you for the opportunity to be here.

Senator PACKWOOD. Thank you.

Mr. Young.

Mr. YOUNG. Yes, sir. The Chairman asked me to clarify one point last year, and you will probably hear it again this year. It is regarding the data that the Commission presents to you about the fi-

nancial condition of the trucking industry. The Chairman's figures on the 100 largest carriers dealt with not only the general freight carriers, but also the specialized carriers. Specialized carriers are household goods, refrigerated, heavy hauler, those types of carriers.

Now, the trucking industry will probably focus on only the general freight carriers. And, with respect to those particular companies, they have rebounded substantially since the 1982 recession, although they are down slightly in 1984 over 1983.

If you look at the smaller carriers, you will see a great deal of competition going on. There have been a lot of new entrants, and as the Chairman testified, labor cost is a significant issue. So, from our perspective, competition is working very well.

This is not to say that because the general freight industry's data show a slight decline in 1984 over 1983, that there is a problem with motor carrier deregulation.

Senator PACKWOOD. Thank you.

Mr. TAYLOR. I think, Mr. Chairman, he has a number of these financial charts, and I think they have been distributed for those in the audience as well. I would request, if I might at this time, to have them made a part of the record of this hearing.

Senator PACKWOOD. They will be a part of the record.

Mr. Chairman, last year, and I am quoting you, you characterized the ICC's trucking regulation as a "monumental paper-shuffling operation," and you at that time said that we should eliminate any further economic trucking regulation. Is that still your view?

Mr. TAYLOR. Things haven't changed a bit, Mr. Chairman. Monumental paper shuffling still goes on, and I fail to see any redeeming public benefit in what we are really doing as far as economic regulation in the trucking industry is concerned for anyone.

I agree with you—the sooner it ends, the better.

Senator PACKWOOD. At the end of your statement, you say the Commission believes there is a need for further deregulation of the motor carrier industry, and you strongly favor legislation that would eliminate economic regulation of motor carriers of property.

How does the Commission come to that conclusion? Do you have a vote?

Mr. TAYLOR. Well, we did send around the prepared testimony for this hearing for a vote. And we have all talked amongst ourselves. We have not had an up-and-down Commission vote as such, as to who favors continued regulation versus who favors deregulation.

But we know from the testimony that has been presented now for a number of years that it has been unanimously supported on those points.

Senator PACKWOOD. And this is also your personal opinion?

Mr. TAYLOR. It is my personal opinion, unqualified. And I have two colleagues here who I am sure would be glad to affirm it so far as they are concerned.

Senator PACKWOOD. Knowing both of their views, I would be happy to have their affirmation on the record. I would be very surprised if it is other than affirmation for that statement.

Mr. Strenio.

Mr. STRENIO. No surprises, Mr. Chairman.

Senator PACKWOOD. Mrs. Gradison.

Mrs. GRADISON. Only to say that the implementation of this act has been difficult, it has been controversial, and I am of the personal opinion, not representing the Commission with this statement, that we need more legislation in order to preserve the progress which has been made. If we don't have more legislation, we may see a more regulatory Commission, and with a more regulatory Commission there is certainly the leeway to go back to the former ways of greater burden of regulation.

Senator PACKWOOD. Well, you still have a fair degree of discretion in the Commission. And, of course, as you are well aware, both those who want more regulation and less have accused you of not using whatever authority you have properly. You haven't gone far enough, or you have gone too far, as the case may be.

But that probably doesn't distinguish you from any other independent commission, in the view of those who deal before it.

But I agree with Ms. Gradison. I would sooner have more deregulation in statute so that there is no judgment or very little judgment and discretion in the future. And again, we are exempting safety and insurance. Those are different issues.

Mr. TAYLOR. We are at the point where there is not a heck of a lot more in the economic area that we can really do by way of administrative implementation. I think the Vice Chairman's point is—and it is well-taken—that we really do need some legislation at this point in time if we are going to go on from here.

Senator PACKWOOD. How serious a problem is insurance, the availability of it and the cost of it for the industry?

Mr. TAYLOR. I think it is a very serious problem. As a matter of fact, if there is one single thing that stands out, at the moment, as perhaps a far bigger regulator than the ICC, it is this difficulty in obtaining insurance at a reasonable price.

Our enforcement people, as Mr. Gaillard can affirm, spend an awful lot of their time now—I would guess the field offices, perhaps as much as half of their time—chasing after people who don't have insurance. And, of course, that is something that we have to police to the extent we can. We keep finding that the problem is that it is terribly expensive to get insurance, and some carriers have difficulty getting it at all. I think that is something Congress is really going to have to have a look at what the reasons are.

We are trying to develop some reasons of our own. We have an informal telephone questionnaire and we are trying to develop some information from the carriers. The insurance companies, I am sure, say their costs have gone up and as interest rates have come down, perhaps their returns have suffered. Nobody is quite sure whether it is claims experience.

The ATA, I believe, feels that it is not claims experience that has led to this enormous increase in insurance rates. But I think it is something somebody has got to get a handle on and do something about, because I agree with you; safety and insurance are important. Carriers out there on the highway have to have that insurance, and if it has gotten to the point of being really difficult or almost impossible in some cases to get any, then I think it deserves some serious attention.

Senator PACKWOOD. We have gone through almost 3 years on product liability battles. There was a time, 10 years ago now, when we came very close to some kind of national medical malpractice insurance. That then tailed off, but you can almost see the issue coming back again with some of the rates that those in the medical profession are now paying.

I am not sure I know the answer. By and large, I find that the insurance companies want to stay in the business if they can, and they would like to write what they can. And I find many people are saying I either cannot get it, or if I can get it, I cannot afford it. It is so disproportionate to my income that I simply cannot afford it.

Mr. TAYLOR. That is exactly what has happened. It has happened to bus carriers as well as property carriers.

Senator PACKWOOD. Let's talk about safety. The Motor Carrier Safety Act of 1984 requires both you and the Department of Transportation to establish meaningful safety fitness procedures.

What action have you taken to date, and what do you expect?

Mr. TAYLOR. We have done everything in our power to move that thing along as quickly as we can. I believe the President signed the bill on October 30. And early on in November, I sought a meeting with Ray Barnhart, Federal Highway Administrator over at DOT, to see if we couldn't get together and set up a kind of an interagency staff group to push forward the implementation of a rulemaking on their side that we could then follow up on our side.

And they have, at least as far as DOT is concerned, moved rather rapidly—considering the fact that they have a more difficult time getting something done over there in an expeditious fashion than we do. It is on the Secretary's desk, as I understand it, at the moment, and we are ready to act the minute we get it.

Senator PACKWOOD. This is one where we are going to continue to leave a fairly broad discretionary authority with you. It is one thing for Congress to say there shall be no more economic regulation. It is another to say safety. We pass a law that says trucks shall be safe. Well, that is easy to pass. It is up to you to decide what is safe, and for us to start getting in law. Safety issues, such as how quickly the truck must stop, are things I would just as soon not get into in terms of specific legislation.

Mr. TAYLOR. I think you are absolutely right. I think that is something for DOT to do, and really they have the primary laboring oar in this field. The ICC to a large extent, has been preempted out of the safety field. But I think as long as we have the licensing authority, then we have to be sure in determining that an applicant is fit, willing, and able, that the applicant has got a good safety record.

I think with economic deregulation—when we are no longer involved in the licensing area—there is probably no reason why those safety determinations can't be made solely over at DOT and the Commission need no longer be involved.

Mr. STRENIO. I just wanted to add, Mr. Chairman, that when it comes to safety, amplifying the point you made earlier, I really don't think there is a regulatory or a deregulatory position; there is just a commonsense position of caution. Economic deregulation and safety are fully compatible with each other, and to the extent

that the Commission has residual safety responsibilities in this area, we are aware of them and we are intent upon fulfilling those responsibilities.

Senator PACKWOOD. Let me ask this of both the Chairman and the two Commissioners. Do you believe that there is any need for any continued liability standards for loss of or damage to freight?

Mr. TAYLOR. Yes, I do, personally. As a matter of fact, you asked us that same question last year, and I told you I would have a little more definitive answer. Since that time, we were before the committee on freight forwarder legislation. Originally, you did not have cargo liability provisions in the bill that we testified on, but in the report language you put it in. And I thought that was absolutely correct.

As a matter of fact, what you said in the report language was, "subsection (c) amends section 11707(a) of title 49, United States Code, to continue to subject general commodities freight forwarders to the liability provisions of the Carmack amendment. The committee understands the significance of these liability provisions to the shipping community as well as to the freight forwarder industry itself. The committee believes it is in the best interests of shippers and forwarders to have cargo liability limits clearly defined."

And I would think that same rationale and reasoning would apply to trucking deregulation in general. I don't see any reason why you cannot keep the Carmack amendment and the benefits it provides in terms of some uniformity. I don't think there is anything inconsistent about that and total economic deregulation of the trucking industry.

Senator PACKWCOD. Commissioner Gradison.

Mrs. GRADISON. I disagree. Without prejudging anything that may come before me in the future, I think this is a problem that can be resolved among individual shippers, with individual carriers. And the terms of liability can be arranged and agreed upon on an individual basis for an individual shipment. And I don't think there is a need for across-the-board regulation in this area.

I realize that there may be political considerations to affect whether or not that is a part of the statute, but from a pure economic regulation basis, I don't think it is necessary.

Senator PACKWOOD. Commissioner Strenio?

Mr. STRENIO. Mr. Chairman, I think I would want to look at the specifics of whether there was an alternative that would enable the transition to the unregulated State without giving great difficulties to shippers because of the interstate aspect of the cargo liability situation.

Senator PACKWOOD. Thank you. I have no more questions. Mr. Chairman and Commissioners, I appreciate very much your coming.

Mr. TAYLOR. We are very pleased to be here. Thank you.

[The statement and attachments referred to follows:]

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. Chairman and Members of the Committee: I want to thank you for the opportunity to appear before this Committee to present the views of the Commission with regard to the implementation and effects of the Motor Carrier Act of 1980. In addi-

tion to the statement, we have included the following attachments: [1] (1) a list providing additional information on Commission proceedings; (2) the latest earnings and traffic volume data for the Nation's largest motor carriers of property; and (3) a list of studies concerning the impact of motor carrier deregulation on small communities.

During the past 5 years of oversight hearings, the Commission has testified that the motor carrier industry and the users of its services have responded favorably to the changes mandated by the Motor Carrier Act of 1980. The Commission reaffirms that view today and, as we have indicated in prior oversight hearings, the Commission strongly supports further deregulation of this industry.

At this time, I would like to point out some of the highlights for the 11-month period ending July 31, 1985, under the Motor Carrier Act of 1980:

Since the effective date of the Act, July 1, 1980, 31,234 new carriers have received authority from the Commission. This marks an increase of 5,901 over the figures reported to this Committee on September 18, 1984.

The total number of new certificates served since the act went into effect is 79,032. There was an increase of approximately 9,586 new certificates since the last Senate hearing.

Applications appear to have leveled off. As of July of this year, applications were being filed at a rate of approximately 1,137 each month. They are holding steady at about that rate.

Overall, shipper satisfaction with the level of service remains high.

Although initial results indicated that the Motor Carrier Act had little positive impact on owner-operators, recent figures suggest that, increasingly, they are making use of the special provisions of the Act to obtain their own operating authority. From June 1, 1982 through June 30, 1985, 667 owner-operators have been granted certificates for operating authority. This represents an increase of about 80 percent above the number reported to this Committee on September 18, 1984.

Contract carrier applications, as a percent of all applications, rose to 45 percent during the fifth year under the act. For the first four years, they accounted for 16 percent, 27 percent, 28 percent and 37 percent, respectively. Existing carriers accounted for about 65 percent of all contract carrier applications for the fifth year.

Broker authority growth has been strong, with approximately 1,804 approvals during the fifth year under the Act. This is about 32 percent higher than the number approved during the fourth year and more than twice the number approved during the third year of the Act.

1,062 firms, with approximately 11,700 subsidiaries, have notified the Commission of their intent to engage in compensated intercorporate hauling.

Motor carrier independent rate actions published by rate bureaus of FY 1985 are projected at 41,732, which reflects a 29.7 percent decline from the reported 59,426 independent actions of FY 1984. These figures reveal a severe decline from FY years 1981, 1982 and 1983 when such activity was reported at 115,085, 180,829 and 230,184, respectively. We attribute the drop in FY 1984 and 1985 to the fact that many motor carriers are publishing discount provisions and negotiated rates in their individual tariffs rather than in bureau publications.

Increased revenues and tonnage hauled were reported by 100 of the largest motor carriers of property for the 12 months ending March 31, 1985, as compared to the same period of 1984. Operating revenues increased 10.3 percent to $17.6 billion and revenue tons hauled rose 5.2 percent. Net carrier operating income decreased 8.7 percent ot $717.1 million and net income fell 11.2 percent to $413.2 million, due primarily to the large declines reported by a few carriers. The combined operating ratio for these carriers rose to 95.9 percent from 95.1 percent. Rate of return on shareholders' equity decreased to 12.14 percent from 14.77 percent.

APPLICATIONS FOR AUTHORITY

The fifth year of experience with the Motor Carrier Act is marked by a continuation in the trend toward an increased number of contract carrier applications, particularly in regard to the percent of applications filed by first-time applicants. This is in contrast to the dramatic increase during the first year in the overall number of applications for common carrier authority, a phenomenon which was primarly due to the initial surge by existing carriers to expand their authority under the new liberalized entry standards.

The following table illustrates these changes:

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[1] The attachments have been retained in the Committee files.

PERCENT OF ALL APPLICATIONS

[rounded]

Dispositions	July 1980 to June 1981	July 1981 to June 1982	July 1982 to June 1983	July 1983 to June 1984	July 1984 to June 1985
All applications for contract carrier authority	16	27	28	37	45
New carrier applications for contract authority	3	12	10	13	28
New carrier applications for all types of authority	11	43	45	50	69

New entrants also account for large shares of applications for common carriers, freight forwarders, brokers, owner-operators, and nationwide general commodity authority. During the second quarter of 1985, the percentage of applications granted within particular categories of authority was as follows:

Share of authorities granted to first time applicants

Type of authority:	*Percent*
Common carriers	65
Freight forwarders	88
Brokers	99
Owner-operators	96
National General Commodity	53

SERVICE

Based on available data, it is clear that the pre-Motor Carrier Act predictions of strengthened competition among carriers, resulting in lower rates and increased price/service options for shippers, have indeed proved correct.

In comparing the first 10 months of FY 1985 with the same period of FY 1984, there has been a 17 percent decrease in the number of complaints received against property carriers which deal with service problems. In the 10 month period ending July 31, 1985, 1488 service complaints of all types were received. Approximately 13 percent, 190, were identified as refusal or failure to serve

In the first 10 months of each of the past 3 FY's, there has been a drop in the number of complaints received from owner-operators which involve property, including household goods carriers. In FY 1983, there was an averge of 375 complaints received per month, and in 1984, the figure was 250 per month. In FY 1985, there has been a 16 percent further reduction to 209 per month. Delays in settlements remain the major problem that owner-operators are experiencing, although the total number has dropped to 1689 complaints in the first 10 months of FY 1985 from 1949 such complaints in the same period of FY 1984. Unloading or detention complaints from owner-operators remain at a very low level. There were only 14 of these complaints filed in the first 10 months of FY 1985. The comparable figure in FY 1984 was 19.

As for service to small communities, research results have consistently indicated that overall motor carrier service to these communities has been at least as good, under less economic regulation, as before. Where there has been a difference, the level and quality of service and competition usually have been moderately better. A 1984 analysis of 10 reports and papers found that research results are similar in all of these studies. This includes the ICC study mandated by Section 28 of the Act and issued in September 1982. Complaints to the Commission on service to small communities have declined each year since 1980. During the 10 month period ending July 31, 1985, of the 109 complaints received for refusal or failure to serve, only 10 involved service to or from communities of less than 15,000 population which are not a part of a larger metropolitan area.

PRICING OPTIONS

Based on eight months' actual data, projected motor carrier tariff filings for FY 1985 are 1,380,000, up 25.4 percent from the 1,100,000 motor tariff receipts of FY 1984. This increase is due primarily to increased pricing flexibility authorized by the Commission in Ex Parte No. MC-170, "Short Notice Effectiveness for Independently Filed Motor Carrier and Freight Forwarder Rates," which became effective on June 25, 1984. As a result of that decision, the traditional 30 day notice period for rate revisions was changed to one day's notice for reduced rates and 7 work days' notice for increased rates. The shortened notice periods have allowed motor carriers and

freight forwarders to react more promptly, and more often, to constantly shifting economic and competitive situations.

We also believe that this improved ability for accelerated response to changing market conditions has spurred the carriers to publsh rates in their individual tariffs rather than through the more time consumer process of bureau filing. This further explains the decline in independent actions published by rate bureaus mentioned above.

The Commission has also encouraged individual carrier tariff filings by eliminating any perceived "mystique" to the compilation and presentation of tariffs. In Docket No. 37321, "Regulation For the Publication, Posting and Filing of Tariff, Schedules and Related Documents," the Commission significantly revised its former rules and regulations concerning the format, structure and manner in which tariffs are formulate and represented to the Commission and the public. The new regulations, which became effective October 30, 1984, are greatly simplified, and are to be viewed as guidelines rather than rigid constraints.

Carriers now have the flexibility to price independently and provide shippers with the service they want. This has increased shippers' demands for a greater variety of price and service options. In response, carriers have reoriented market strategies and structured operation systems and networks to meet these demands. Carriers and major rate bureaus have worked to simplify rate structures and tariffs. For example, some carriers now group origins and destinations according to ZIP codes. Also, shippers have negotiated simplified rate systems designed to meet specific needs.

INTERMODALISM

The Commission continues to facilitate intermodalism which by its very nature offers a variety of service options. Evolvement toward multimodal transportation companies is a natural movement toward greater efficiency that less regulation makes possible. Multimodal transportation companies have maximum opportunities to combine the inherent advantages of different transport modes in a way that optimizes the trade-offs between costs and service levels to the ultimate benefit of the consuming public.

In Ex Parte No. MC-156, "Motor Carrier Operating Authority—Railroads," 132 M.C.C. 978 (1983), the Commission decided to no longer apply the "special circumstances" doctrine to the licensing of rail—affiliated motor carriers. In Ex Parte No. 438, "Acquisitions of Motor Carriers By Railroad," 1 I.C.C. 2d —— (1984), the Commission decided that for a railroad to acquire a motor carrier, it need only demonstrate that it would use the motor carrier to public advantage in its overall transportation operations, and not necessarily in its rail operations.

In Finance Docket No. 30500, "Norfolk Southern Corp.—Control—North American Van Lines, Inc.", the Commission, last April, applied Ex Parte No. 438 in approving the rail acquisition of a motor carrier. In approving this acquisition, the Commission is aware that such potential formations of large multimodal transportation companies may create concern regarding the competitive effect of specific mergers. For this reason, the Commission carefully considers the particular circumstances on a case-by-case basis.

In Ex Parte No. 230 (Sub-No. 6), "Improvement of TOFC/COFC Regulation," the Commission voted to exempt from regulation the over-the-road portion of trailer-on-flatcar and container-on-flatcar service by rail-affiliated and other motor carriers.

FINANCIAL CONDITION OF MOTOR CARRIER INDUSTRY

A. Latest Earnings Data

The latest data published by the ICC's Bureau of Accounts shows that large trucking companies reported increased revenues but declines in earnings for the first quarter of 1985 and the twelve months ending March 31, 1985, as compared to the same periods of 1984. Attached, as Appendix II, is a report comparing the earnings of 100 of the largest motor carriers of property (excluding the two United Parcel Service carriers) for the quarter and twelve months ending March 31, 1985 with the corresponding periods in 1984.

A comparison of the first quarter operations shows that:

Operating revenues rose 2.3 percent to almost $4.1 billion, despite a 5.7 percent decrease in revenue tons hauled.

Net carrier operating income decreased almost 40 percent to about $68 million, and net income declined by about 49 percent to $33.4 million.

Of these 100 carriers, 60 reported increased operating revenues, 40 reported improved net carrier operating income, 40 reported improved net income, and 40 reported increased tonnage hauled.

A comparison of results for the 12-month periods shows that:

Operating revenues increased 10.3 percent to $17.6 billion and revenue tons hauled rose 5.2 percent.

Net carrier operating income decreased 8.7 percent to $717.1 million, and net income fell 11.2 percent to $413.2 million, due primarily to the large declines reported by a few carriers.

The operating ratio (ratio of operating expenses to operating revenues) rose to 95.9 percent from 95.1 percent.

Rate of return on shareholders' equity decreased to 12.14 percent from 14.77 percent.

Ninety of the 100 carriers achieved increased operating revenues and 72 carries hauled more tonnage during the 12 months ending March 31, 1985. Fifty-five carriers reported improved net carrier operating income and 58 carriers reported improved net income.

B. Recent Bankruptcies and Cessation of Operations by Large Motor Carriers

LATEST AVAILABLE ANNUAL REVENUES

[In thousands of dollars]

BN Transport, Inc	Filed for bankruptcy, Chapter 11	August 1985	$50,196
Mercury Motor Express	Ceased operations	November 1984	48,786
Mushroom Transportation Co., Inc.	Filed for bankruptcy, Chapter 11	June 1985	30,999
Oneida Motor	Filed for bankruptcy, Chapter 11	July 1985	59,565
Santa Fe Trail Transportation Co	Filed for bankruptcy, Chapter 11	August 1985	43,631
Mercury Freight Lines, Inc.	Ceased operations	February 1985	8,240
Clairmont Transfer Co.	Filed for bankruptcy, Chapter 11	November 1984	
	Ceased operations	January 1985	43,647
Salt Creek Freightways	Filed for bankruptcy, Chapter 11	January 1985	25,066
Lee Way Motor Freight	Filed for bankruptcy, Chapter 11		170,068
CL Motor Freight		[1] March 1985	57,076

[1] Bankruptcy was actually filed by Lee Way Holding Co., the surviving company after merger of Lee Way Motor Freight and CL Motor Freight, formerly named Commerical Lovelace Motor Freight.

ORGANIZED LABOR AND GENERAL TRUCKING INDUSTRY EMPLOYMENT

The following data from the Bureau of Labor Statistics shows that the rate of trucking industry employment was as favorable or better than that of manufacturing during each year from 1978 through 1982. Since then, the rate of unemployment in trucking has been higher than in manufacturing.

	Employed [in thousands]	Unemployed [in thousands]	Unemployment rate percent	
			Trucking service	Manufacturing
1978	1,341	63	4.5	5.5
1979	1,407	80	5.4	5.5
1980	1,346	121	8.2	8.5
1981	1,380	122	8.1	8.3
1982	1,360	161	10.6	12.3
1983	1,427	169	10.6	8.6
1984	1,587	138	8.0	6.6
1985: 2d quarter	1,643	122	6.9	6.2

Since mid-1980, labor costs have become a far more inportant influence on the success or failure of trucking firms. Most of the more than 14,000 new motor carriers operating under the Act are non-union carriers. Price competition and discounting have made wages a critical factor in financial performance.

During the decade of the seventies, the number of Teamster truck drivers declined from approximately 400,000 to 300,000. This appeared to be the results of rapid growth of private carriage and non-union irregular route carriers.

Surveys and statements in 1981 by the International Brotherhood of Teamsters and Dun Business Review indicate that approximately 100,000 Teamsters had lost jobs in trucking since the Act was implemented. A study by the General Accounting Office concluded that the reduction in Teamster employment was primarily the result of the recession, rather than deregulation.

Several trucking companies in financial difficulty have negotiated separate contracts with the Teamsters under Employee Stock Ownership Plans (ESOP). Union employees became part owners of the firms in exchange for their agreement to accept lower wages.

COLLECTIVE RATEMAKING

The Motor Carrier Act of 1980 established minimum requirements and standards for motor carrier rate bureaus as conditions precedent to their continued antitrust immunity for collective activity. It required bureaus to file with the Commission new or amended rate agreements within 120 days of enactment of the statute, and required bureaus to observe the requirements and standards of the Act, as well as the implementing regulations, during the time amended agreements are being prepared for, submitted to, and considered by the Commission.

Over 40 rate bureaus have made timely filings and are thus operating with immunity from the antitrust laws. The Commission has been reviewing the amended rate agreements and nine agreements have been approved provisionally, subject to the respective bureaus' making modifications that will make the agreements completely consistent with the act. Two other agreements are pending for votes before the Commission.

In the last year, the Commission has issued several significant decisions affecting motor carrier rate bureaus. The agency considered a petition for the withdrawal of antitrust immunity for collective ratemaking by motor carriers of property for rates on shipments under 1,000 pounds. Specifically, petitioners had alleged that there is little effective competition for shipments below 1,000 pounds and that, under these conditions, collective ratemaking results in the imposition of unreasonable rates, allowing bureau members to derive the major portion of their profits from revenues on small shipments.

In Ex Parte No. MC-172, "Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments," the Commission solicited public comments on whether antitrust immunity should be withdrawn with respect to rates on shipments under 1,000 pounds, on whether 1,000 pounds or some other level is the appropriate point for defining small shipments in the context of the proposal, and on whether antitrust immunity should be withdrawn from any other motor rate bureau activity or should be withdrawn altogether. Comments were filed in this case by more than 60 parties and an oral argument was held. After full consideration, the Commission, in an open conference, decided that the record did not support the withdrawal of antitrust immunity for collective ratemaking in this instance and denied the petition. A decision reflecting the Commission's vote and discontinuing the proceeding was served on December 13, 1984.

Recently, in Ex Parte No. 297 (Sub-No. 7), "Motor Carrier Rate Bureaus—Expansion of Collective Ratemaking Territory," the Commission considered whether rate bureaus may be permitted to expand the territorial scope of the respective territories in which they engage in collective activities.

Initially, the Rocky Mountain Tariffs Bureau, Inc. (RMB), on April 21, 1983, petitioned the Commission for a declaratory order that the previously approved nationwide government traffic ratemaking procedures also permit the collective discussion and publication of commercial traffic rates and charges. RMB argued that rating, billing, and rate modification were inefficient and costly on a limited territorial basis, particularly in light of the nationwide operating authority which several RMB carriers possessed.

The Commission was unable to conclude, as an interpretive matter, that RMB could collectively discuss and publish commercial traffic rates and charges on a nationwide basis, and the petition accordingly was denied. However, the Commission decided to treat RMB's petition as a request for expansion of its territorial authority, sought public comment on that proposal, and directed RMB to submit proposed amendments to its ratemaking agreement that would permit it to implement the proposal if adopted. RMB complied, and six other rate bureaus subsequently filed petitions seeking approval to expand the scope of the respective territories in which

they publish tariffs and engage in collective activities (one rate bureau subsequently asked that its request be withdrawn). All petitioners raised issues similar to those raised by RMB. The bureaus were concerned that Commission action on RMB's petition, prior to action on their own similar requests, would put them at a competitive disadvantage in serving their member carriers that are also members of RMB.

Accordingly, the Commission, in March 1984, consolidated the petitions for consideration to ensure that any forthcoming relief would be afforded to all bureaus on an equal basis. Comments were filed by shippers, rate bureaus, and the Department of Justice.

Because of the importance of the issues in the Ex Parte No. 297 (Sub-No. 7) proceeding, the Commission held oral argument on December 4, 1984. The arguments presented there, as well as the written comments filed previously, were given due consideration before the Commission voted in this matter at an open conference on May 21, 1985. At that time, the Commission voted to hold the matter in abeyance pending approval or disapproval of the general commodity rate bureau agreements now pending before the Commission and to certify the record to Congress.

OWNER OPERATORS AND THE MOTOR CARRIER ACT

On November 30, 1984, the Commission served final rules in Ex Parte No. MC–43 (Sub-No. 14), "Lease and Interchange Regulations (Master Leases)". In this proceeding, the Commission modified its leasing regulations to allow the use of a master lease covering more than one unit of equipment; to require that a copy of the master lease be carried in the equipment; and to allow required receipts to be transmitted by mail, telegraph, or other similar means of communication. These additions to the lease and interchange rules authorize the use of a master lease in connection with trip-lease operations and permit carriers to issue the initiating receipt other than in person.

The use of a presigned master lease and the transmittal of receipts by telegraph or other similar means provide lessors and lessees with the flexibility needed to trip lease whenever an authorized carrier does not have an agent present at the point of transfer. Trip leasing plays a significant role in reducing empty backhauls and promoting overall efficiency. These new rules will serve the useful public purposes of allowing greater efficiency in both the private and for-hire sectors of the transportation industry and of providing shippers with more responsive service.

Final rules further modifying the Commission's leasing regulations were issued on December 6, 1984, in Ex Parte No. MC–43 (Sub-No. 15), "Elimination of Thirty Day Leasing Equipment". In this decision, the Commission concluded that the 30-day minimum period required on a lease of equipment between owner-operators and authorized carriers no longer served a valid regulatory purpose and was inconsistent with the provisions of the Motor Carrier Act and the National Transportation Policy, noting that departure from the 30-day requirement had been approved earlier in another proceeding involving leases of equipment between private carriers and authorized for-hire carriers (132 M.C.C. 927 [1982]). Thus, relief from the 30-day minimum duration rule was accorded to all equipment lessors in this proceeding. Owner-operators now have the opportunity to negotiate a lease for the precise length of time needed to provide the services and to improve operating efficiencies materially.

Two other actions directly affecting owner-operators are now under consideration. In the first, notice of a proposal was served in Ex Parte No. MC–43 (Sub-No. 16), "Lease and Interchange of Vehicles (Identification Devices)," on December 12, 1984. In this rulemaking, the Commission is proposing to modify the existing rules to allow an authorized carrier, upon termination of a lease agreement, to condition payment to an owner-operator upon the return of the carrier's identification devices, or, alternatively, to allow the parties to an equipment lease to provide in their lease that the owner-operator, rather than the carrier, be responsible for removal and return of the identification devices.

Currently, carriers can only condition payment to an owner-operator upon receipt of log books required by the Department of Transportation and those documents necessary to obtain payment from the shipper. The purpose of the proposed revisions is to avoid carrier liability for the acts of others upon termination of a lease, if, for any reason, the equipment continues to display the carrier's identification. In recent court decisions, carriers were held liable for injuries that occurred after termination of the contracts but before removal and return of the carriers' identification devices. Comments have been received and a final Commission decision should be rendered in the near future.

The second proposal involves revision of the Commission's single-source leasing policy. On August 1, 1985, the Commission served notice of a proposal in Ex Parte No. MC-122 (Sub-No. 2), "Lease of Equipment and Drivers to Private Carriers—Petitions for Modification." By that notice, the Commission is proposing to eliminate the requirement that equipment leases between private carriers be for a minimum term of 30 days. Under the existing rules, the 30-day lease term is 1 of 6 criteria that must be included in any agreement between private carriers and other shippers to lease both equipment and drivers directly from owner-operators or other noncertificated sources.

Public comments have been solicited on the potential benefits or disadvantages of such an amendment and whether the 5 remaining essential criteria would be sufficient for the Commission to monitor the legality of leases between private carriers and noncertificated carriers. Once comments have been received, the Commission will weigh all the arguments and render a final decision.

STUDY ON MINORITIES AND WOMEN IN THE MOTOR CARRIER INDUSTRY

Earlier this year the Office of Transportation Analysis issued an updated roster of minorities and female-owned motor carriers. That listing contains the names and addresses of 608 carriers owned by minorities and 995 owned by women. Using this list as its data base, the Commission's Small Business Assistance Office is now conducting a second stage survey to collect additional information regarding the specific types and scope of operations performed by these segments of the motor carrier industry.

In June of 1985, SBAO mailed questionnaires to all motor carriers responding to OTA's minority identification survey, soliciting information on the types of authorities possessed, the kinds of commodities transported, and the territories served by each of the responding minority and feamale-owned motor carrier businesses.

Like the OTA identification program, replies to this survey are strictly voluntary. To date, approximately 45 percent of the businesses receiving the questionnaires have completed and returned them to the ICC. The responses are now being analyzed and the data entered into a computer program designed specifically for this project. Once SBAO's analysis is complete, this Commission will issue a publication listing the participants with a complete description of the ICC authority held by each.

With the availability of this document, shippers and manufacturers seeking to employ such businesses will be better able to locate minority and female-owned motor carriers who are capable of meeting their respective transportation needs. The Commission too will be in a better position to furnish a profile of the kinds and scope of operations conducted by minorities and women possessing interstate motor carrier authority. Once the results of this survey have been published, the Commission will furnish the Committee with a copy.

ENFORCEMENT

During the past year, enforcement activities were conducted in accordance with the Enforcement Policy Statement that the Commission adopted in July 1984. The Policy Statement identified 11 high emphasis enforcement categories that would receive the priority attention by the staff, with other enforcement items addressed to the extent resources were available. The high emphasis enforcement categories involve violations in the areas of:

Antitrust
Ethics
Fitness/Safety
Household Goods
Illegal lumping
Insurance
Kickbacks
Overchanges/Duplicate Payments/Claims/COD
Owner-Operator Problems
Unauthorized Passenger Carrier Operations
Weight bumping

The results show that approximately 85 percent of the FY 1985 enforcement case load relates to high emphasis enforcement categories. The most prevalent type of case involved the lack of insurance by motor carriers. There are a number of reasons for this development, including the following:

1. The increased minimum level of insurance coverage that carriers must maintain;

2. The impact of aggregation where the cancellation of a portion of the coverage by one of the carriers' insurers triggers non-compliance;

3. The precipitous insurance premium increases that affect marginal carriers' ability to maintain the required insurance coverage; and,

4. The continuous increase in the total number of carriers in the regulated universe, which increases the chances for these types of problems to occur.

During the last 6 months, the Commission has received numerous calls from new and existing motor carriers who are encountering difficulties obtaining necessary insurance coverage. The situation appears to be escalating, as more and more insurance companies elect to discontinue underwriting motor carrier policies or to double or triple rates applicable to commercial motor carriage policies. Both motor freight and passenger carriers across the nation are experiencing these problems.

Prior to 1981, motor freight operators and motor passenger carriers were required to have a minimum of $500,000 public liability insurance. Section 30 of the Motor Carrier Act mandated that this minimum be increased to $750,000 for motor carriers of non-hazardous property (and $5 million for freight operations involving the movement of hazardous materials). Likewise the minimum public liability coverage required for interstate motor carriers of passengers in vehicles with a seating capacity of 16 or more will be raised to $5 million under section 18 of the Bus Regulatory Reform Act of 1982. Currently, the minimum amounts are $750,000 for freight carriers and $2.5 million for motor passenger carriers. The increase in public liability insurance requirements does not appear to be the sole reason for the recent actions of many insurance companies, but the increase undoubtedly accounts for part of the insurance problem facing the motor carrier industry.

This situation is reflected in the dramatic increase in the number of Commission insurance cancellation warning letters and consent agreements. The Commission issues a letter to a motor carrier if the agency has not received notice of new insurance obtained by the carrier two weeks before the original insurance is canceled. If there is no response, the Commission seeks a consent agreement requiring that carrier to acquire insurance to remain operational.

The Commission averaged 12,000 warning letters annually in the years following the enactments of the act. It is projected that 16,000 letters will be sent this year. In fiscal year 1984, 25 consent agreements were obtained by the agency. Whereas, 365 agreements have been obtained to date this year. The Commission has asked the Office of Compliance and Consumer Assistance to continue to analyze why these increases have occurred and determine what can be done to alleviate the insurance problem confronting the motor carrier industry.

Another area of enforcement which is receiving close attention involves kickbacks (commercial bribery) to traffic managers of shippers in order to secure a large share of the traffic. These practices, along with the practice of double billing or duplicate payments, constitute major anticompetitive activities which require enforcement attention.

Safety-fitness issues have been receiving close attention also. The Commission has been cooperating with the DOT as it develops the safety fitness standards mandated by the Motor Carrier Safety Act of 1984 (49 U.S.C. 10530). When the new safety fitness certification procedures have been implemented by DOT, the Commission will promptly conduct its own rulemaking in coordination with DOT. It is expected that the rules adopted will require denial of motor carrier applications where the carrier is not in compliance with the safety fitness standards.

The Commission is continuing vigorously to reform and minimize economic regulation of motor carriers in accordance with Congressional intent and the National Transportation Policy. As we have indicated in prior oversight hearings, the Commission believes there is a need for further deregulation of the motor carrier industry, and we strongly favor legislation which would eliminate economic regulation of motor carriers of property.

This concludes the Commission's remarks on the implementation of the Motor Carrier Act of 1980.

I will be pleased to answer any questions you may have.

Analysis of Charts Showing Composite Data of 100 of the Largest Motor Carriers of Property, 1979–84

I. BRIEF ANALYSIS OF DATA

These charts and the underlying data indicate the following:

Net income declined substantially in 1982, a recession year, to about $177 million, compared to the previous three years when net income exceeded $300 million in

each year. A significant improvement occurred in both 1983 and 1984, as net income rose to about $450 million in each of these years.

The trend in net carrier operating income was the same.

Operating ratio significantly worsened to 97.8 percent in 1982 but favorably declined to 95 percent in 1983 and moderately rose to 95.6 percent in 1984.

Return on equity for the 100 carriers plunged to 6.1 percent in 1982, but significantly improved in 1983 (14.3 percent) and 1984 (13.2 percent).

Returns on equity in both 1983 and 1984 for the motor carriers exceeded the composite all-manufacturers' return on equity.

Revenue tons hauled declined substantially between 1979 and 1982, but moderately rose in 1983 and 1984.

II. DESCRIPTION OF CHARTS

These charts show, for each of the years 1979 through 1984, the following composite data for 100 of the largest motor carriers of property:

Net income—represents net income before extraordinary charges for write-down of operating rights and extraordinary credits for the tax effect of such write-downs.

Operating ratio—ratio of operating expenses to operating revenues.

Return on equity—ratio of net income to shareholders' equity, less intangibles, at end of calendar year. This ratio is also compared with the Bureau of the Census' rates of return of "All Manufacturing Corporations."

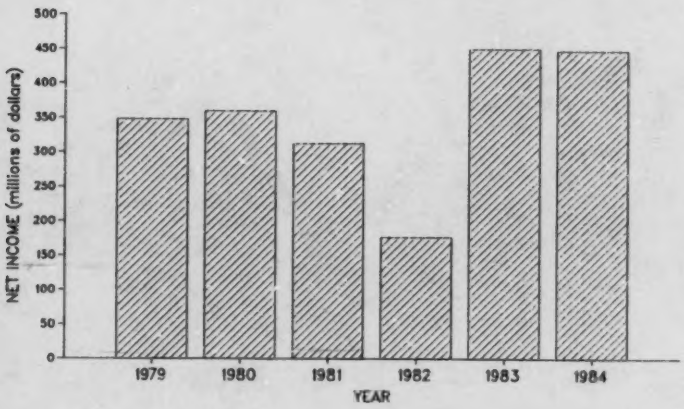
Revenue tons hauled.

The data in these charts were derived from the annual reports Form M filed by these carriers with the Commission.

Of these 100 carriers, 61 are general freight carriers and 39 are specialized commodity carriers, such as haulers of household goods, motor vehicles, liquified petroleum, refrigerated products, building materials, heavy machinery and other specialized products. The 100 carriers included in this group are the same during the entire time series.

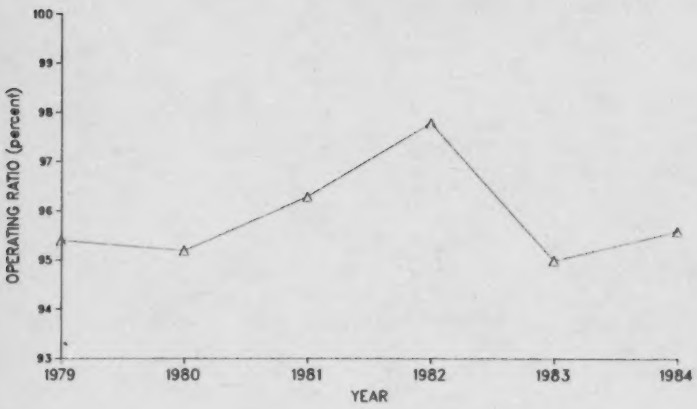
100 OF THE LARGEST MOTOR CARRIERS OF PROPERTY

NET INCOME
YEAR 1979 – YEAR 1984
(IN MILLIONS OF DOLLARS)



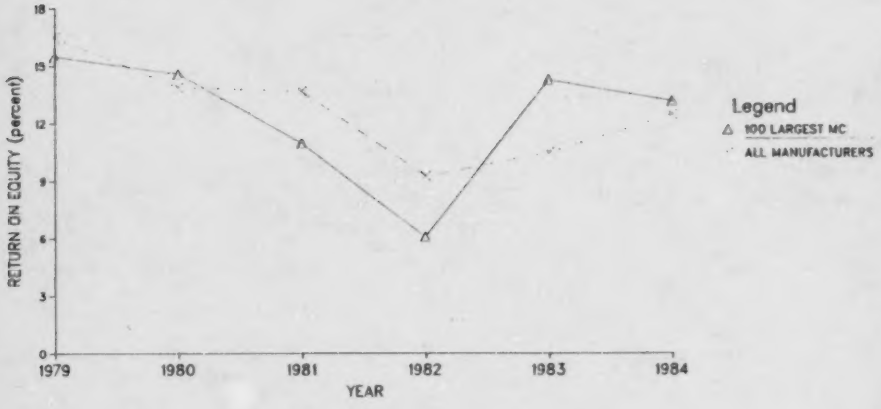
100 OF THE LARGEST MOTOR CARRIERS OF PROPERTY

OPERATING RATIO
YEAR 1979 – YEAR 1984
(PERCENT)



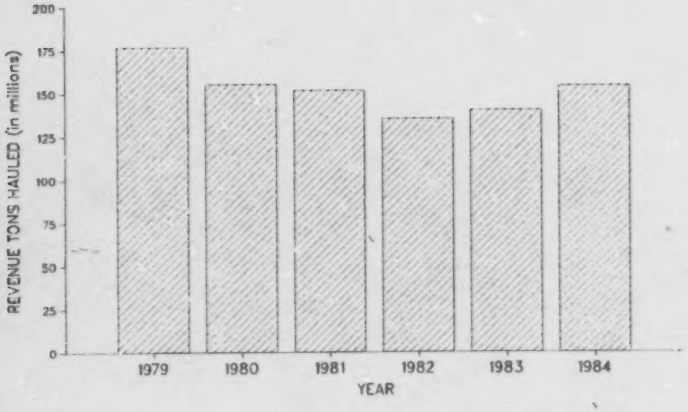
100 OF THE LARGEST MOTOR CARRIERS OF PROPERTY

RETURN ON EQUITY – MC INDUSTRY VERSUS ALL MANUFACTURERS
YEAR 1979 – YEAR 1984
(PERCENT)



100 OF THE LARGEST MOTOR CARRIERS OF PROPERTY

REVENUE TONS HAULED
YEAR 1979 – YEAR 1984
(IN MILLIONS)



Analysis of Charts Showing Composite Data of 100 of the Largest Motor Carriers of Property and Component Groups (General Freight and Specialized Commodity Carriers), 1979-84

I. BRIEF ANALYSIS OF DATA

These charts and the underlying data indicate the following:

Net incomes of the general freight and specialized commodity carrier groups dropped substantially in 1982, a recession year, compared to previous years.

The 39 carrier specialized commodity group reported a substantial increase in net income in both 1983 and 1984. A significant income improvement was achieved by the 61 carrier general freight group in 1983 but a moderate decline occurred in 1984 as several carriers reported large reductions in earnings.

The trend in net carrier operating income was similar.

Revenue tons hauled by both groups rose in 1983 and in 1984 compared to recession impacted 1982.

II. DESCRIPTION OF CHARTS

These charts show, for each of the years 1979 through 1984, the following composite data for (a) 100 of the largest motor carriers of property; (b) 61 general freight carriers included in the 100 carrier group; and (c) 39 specialized carriers included in the 100 carrier group (haulers of household goods, motor vehicles, liquified petroleum, refrigerated products, building materials, heavy machinery and other specialized products):

Net income—represents net income before extraordinary charges for write-down of operating rights and extraordinary credits for the tax effect of such write-downs.

Operating ratio—ratio of operating expenses to operating revenues.

Return on equity—ratio of net income to shareholders' equity, less intangibles, at end of calendar year. This ratio is also compared with the Bureau of the Census' rates of return of "All Manufacturing Corporations."

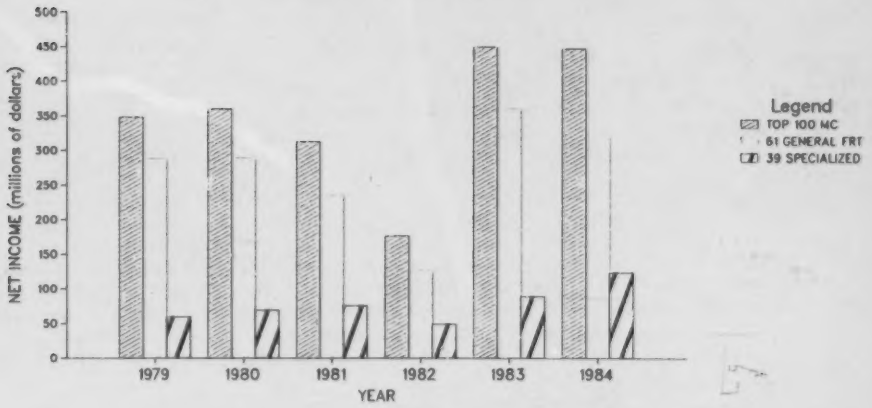
Revenue tons hauled.

The data in these charts were derived from the annual reports Form M filed by these carriers with the Commission.

The 100 carriers included in this group are the same during the entire time series.

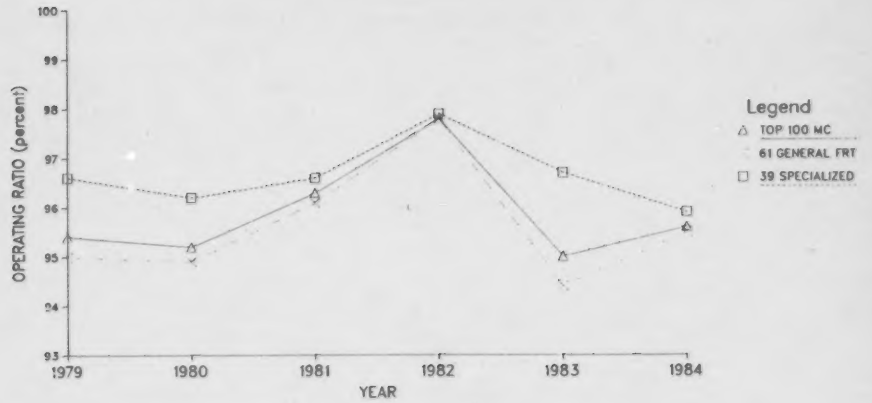
100 OF THE LARGEST MOTOR CARRIERS OF PROPERTY

NET INCOME
TOP 100 MC PLUS BREAK-DOWN INTO GENERAL FRT AND SPECIALIZED
YEAR 1979 - YEAR 1984
(IN MILLIONS OF DOLLARS)



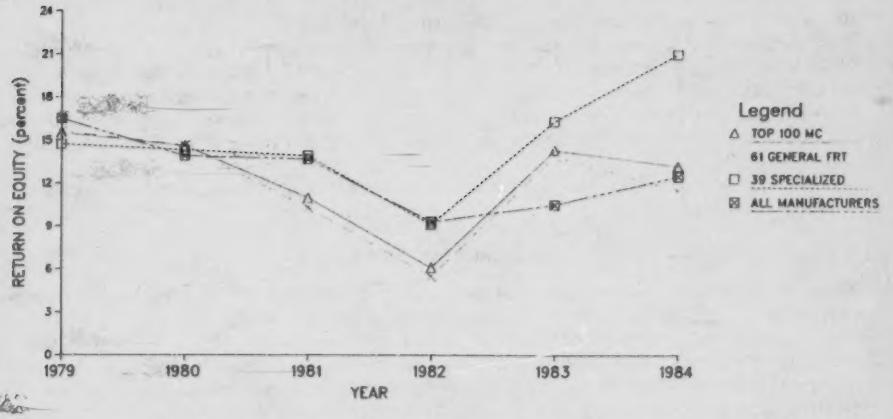
100 OF THE LARGEST MOTOR CARRIERS OF PROPERTY

OPERATING RATIO
TOP 100 MC PLUS BREAK-DOWN INTO GENERAL FRT AND SPECIALIZED
YEAR 1979 - YEAR 1984
(PERCENT)



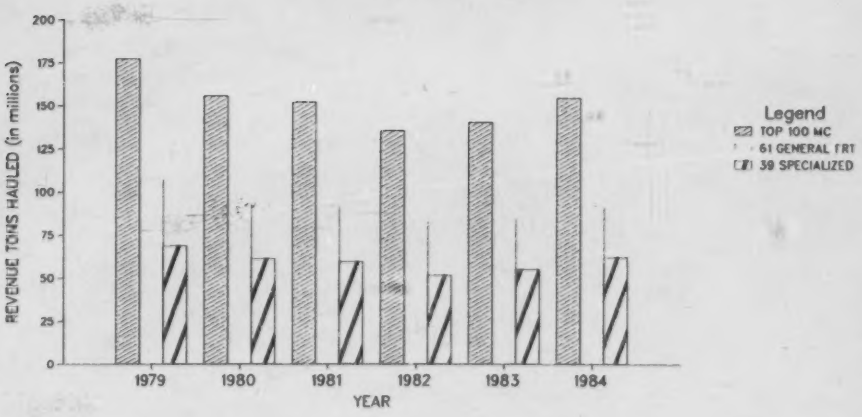
100 OF THE LARGEST MOTOR CARRIERS OF PROPERTY

PERCENT RETURN ON EQUITY
TOP 100 MC PLUS BREAK-DOWN INTO GENERAL FRT AND SPECIALIZED
VERSUS ALL MANUFACTURERS
YEAR 1979 - YEAR 1984



100 OF THE LARGEST MOTOR CARRIERS OF PROPERTY

REVENUE TONS HAULED
TOP 100 MC PLUS BREAK-DOWN INTO GENERAL FRT AND SPECIALIZED
YEAR 1979 - YEAR 1984
(IN MILLIONS)



Analysis of Charts Showing Composite Data of 100 of the Largest Motor Carriers of General Freight, 1979–84

I. BRIEF ANALYSIS OF DATA

These charts and the underlying data indicate the following:

Net income declined substantially in 1982, a recession year, to about $128 million, compared to the levels of the previous three years. Net income rose significantly in 1983 to $370 million but declined in 1984 to $318 million.

The trend in net carrier operating income was the same.

Operating ratio substantially worsened in 1982 to 97.9 percent but favorably declined in 1983 to 94.7 percent. This ratio rose to 95.8 percent in 1984.

Returns on equity for the 100 carriers were 11.5 percent and 13.9 percent in 1984 and 1983 respectively, which were significantly higher than the 5.5 percent shown in 1982.

Revenue tons hauled declined substantially between 1979 and 1982, but moderately rose in 1983 and 1984.

II. DESCRIPTION OF CHARTS

These charts show, for each of the years 1979 through 1984, the following composite data for 100 of the largest motor carriers of general freight.

Net income—represents net income before extraordinary charges for write-down of operating rights and extraordinary credits for the tax effect of such write-downs.

Operating ratio—ratio of operating expenses to operating revenues.

Return on equity—ratio of net income to shareholders' equity, less intangibles, at end of calendar year. This ratio is also compared with the Bureau of the Census' rates of return of "All Manufacturing Corporations."

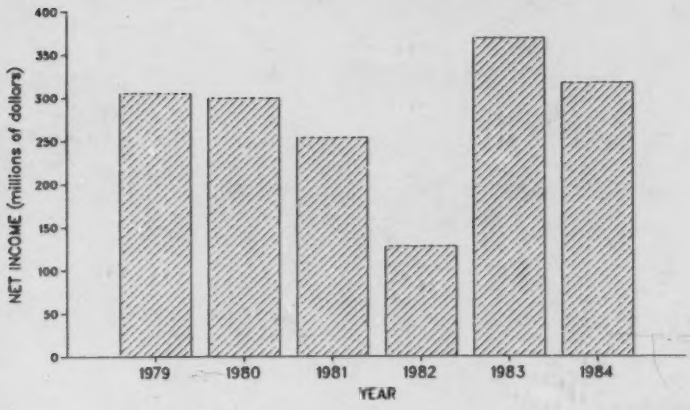
Revenue tons hauled.

The data in these charts were derived from the annual reports Form M filed by these carriers with the Commission.

The 100 carriers included in this group are the same during the entire time series.

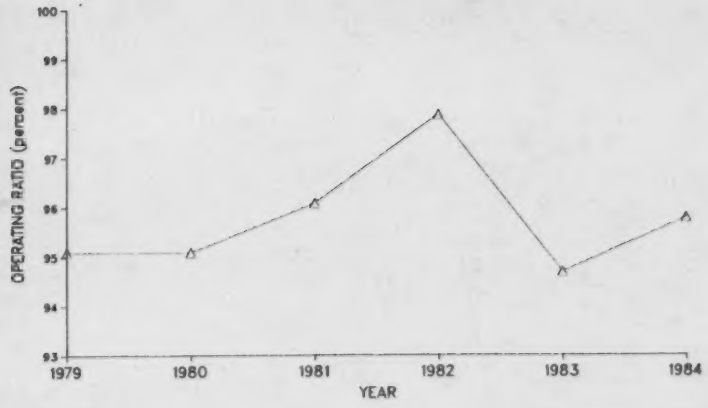
100 OF THE LARGEST GENERAL FREIGHT CARRIERS

NET INCOME
YEAR 1979 – YEAR 1984
(IN MILLIONS OF DOLLARS)



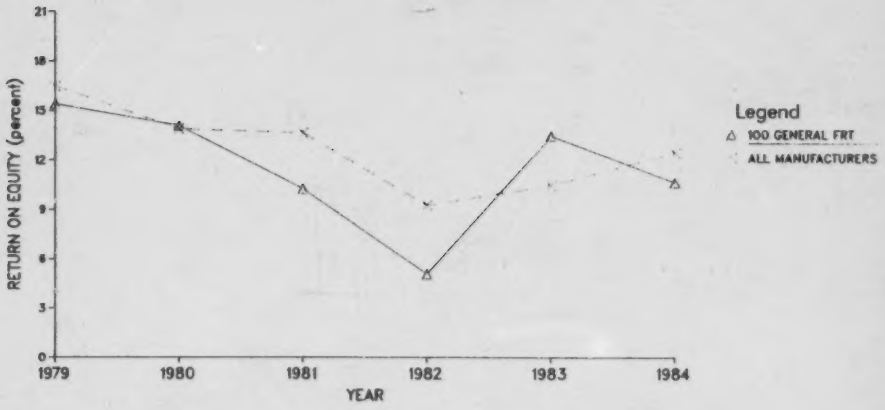
100 OF THE LARGEST GENERAL FREIGHT CARRIERS

OPERATING RATIO
YEAR 1979 – YEAR 1984
(PERCENT)



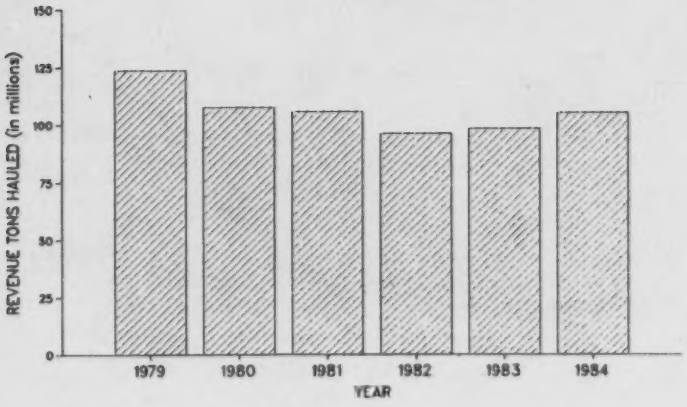
100 OF THE LARGEST GENERAL FREIGHT CARRIERS

RETURN ON EQUITY – 100 GENERAL FREIGHT VERSUS ALL MANUFACTURERS
YEAR 1979 – YEAR 1984
(PERCENT)



100 OF THE LARGEST GENERAL FREIGHT CARRIERS

REVENUE TONS HAULED
YEAR 1979 – YEAR 1984
(IN MILLIONS)



Analysis of Charts Comparing Composite Data of 100 of the Largest Motor Carriers of Property and 100 of the Largest Motor Carriers of General Freight

I. BRIEF ANALYSIS OF DATA

These charts and the underlying data indicate the following:

Net income for both groups declined substantially in recession year 1982, compared to the levels of the previous three years. Net income of the property carriers (general freight and specialized commodity haulers) rose significantly to about the same magnitude in both 1983 and 1984. Net income of the general freight carriers also rose substantially in 1983, but declined in 1984.

The trend in net carrier operating income for both groups was similar.

The operating ratio for both groups substantially worsened in 1982 but favorably declined in 1983. Both groups reported increases in operating ratio in 1984.

Returns on equity for both groups were substantially higher in 1983 and 1984 compared to 1982.

Revenue tons hauled for both groups declined substantially between 1979 and 1982, but moderately rose in 1983 and 1984.

II. DESCRIPTION OF CHARTS

These charts compare, for each of the years 1979 through 1984, the following composite data for 100 of the largest motor carriers of property (general freight and specialized commodity haulers) and 100 of the largest motor carriers of general freight.

Net income—represents net income before extraordinary charges for write-down of operating rights and extraordinary credits for the tax effect of such write-downs.

Operating ratio—ratio of operating expenses to operating revenues.

Return on equity—ratio of net income to shareholders' equity, less intangibles, at end of calendar year. This ratio is also compared with the Bureau of the Census' rates of return of "All Manufacturing Corporations."

Revenue tons hauled.

The data in these charts were derived from the annual reports Form M filed by these carriers with the Commission.

Of the 100 motor carriers of property, 61 are general freight carriers and 39 are specialized commodity carriers, such as haulers of household goods, motor vehicles, liquified petroleum, refrigerated products, building materials, heavy machinery and other specialized products. The 100 carriers in the property carrier group and the 100 carriers in the general frieght group are the same during the entire time series.

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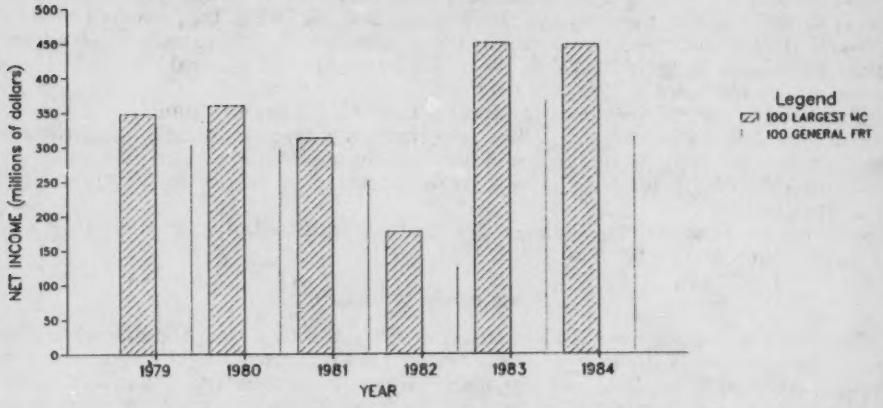
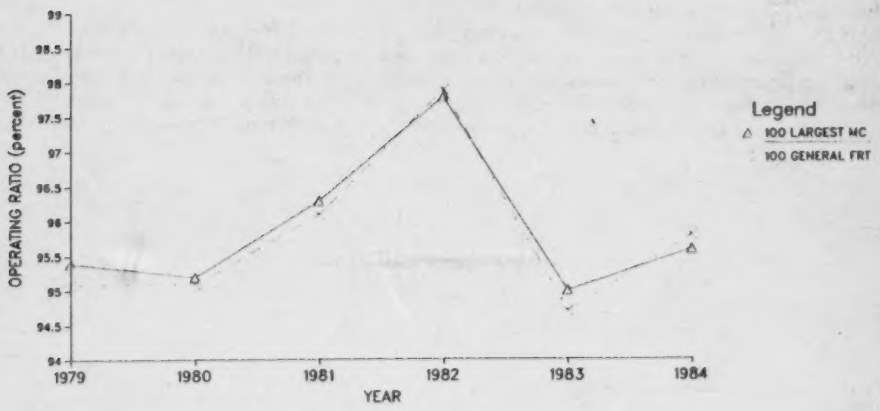
100 OF THE LARGEST MOTOR CARRIERS OF PROPERTY VERSUS 100 OF THE LARGEST GENERAL FREIGHT CARRIERS

NET INCOME
YEAR 1979 – YEAR 1984
(IN MILLIONS OF DOLLARS)



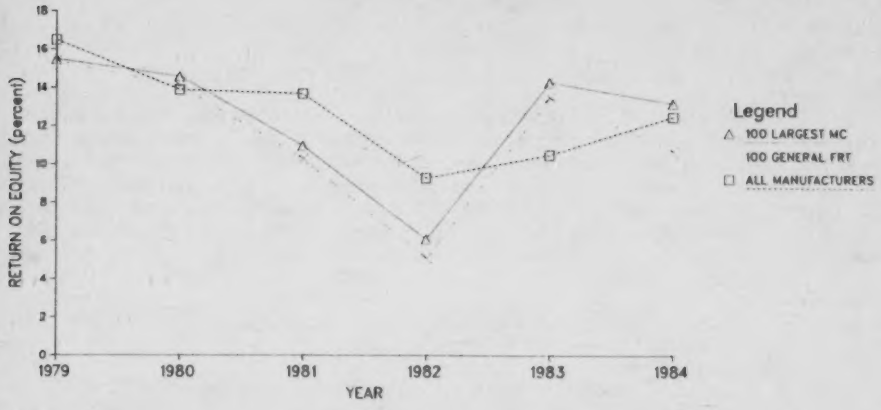
100 OF THE LARGEST MOTOR CARRIERS OF PROPERTY VERSUS 100 OF THE LARGEST GENERAL FREIGHT CARRIERS

OPERATING RATIO
YEAR 1979 – YEAR 1984
(PERCENT)



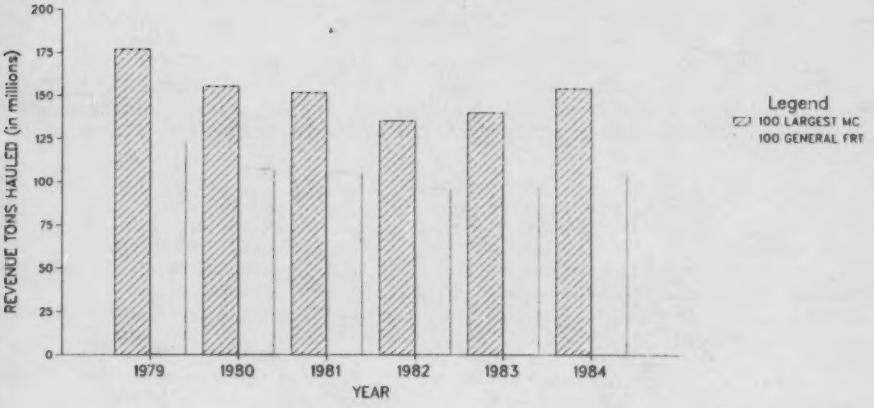
100 OF THE LARGEST MOTOR CARRIERS OF PROPERTY VERSUS 100 OF THE LARGEST GENERAL FREIGHT CARRIERS

RETURN ON EQUITY : 100 LARGEST MC – 100 GENERAL FREIGHT – ALL MANUFACTURERS
YEAR 1979 – YEAR 1984
(PERCENT)



100 OF THE LARGEST MOTOR CARRIERS OF PROPERTY VERSUS 100 OF THE LARGEST GENERAL FREIGHT CARRIERS

REVENUE TONS HAULED
YEAR 1979 – YEAR 1984
(IN MILLIONS)



[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. We heard testimony on September 9, 1985, that the ICC has "underutilized" the regulatory tools left by Congress in the Motor Carrier Act of 1980. What is your view of this claim? Do you think the Commission has used its regulatory authority properly since enactment of the 1980 Act?

Answer. In the past five years, the Commission has worked diligently to properly implement the Motor Carrier Act of 1980. In so doing, the Commission has acted responsibly in using its regulatory authority in the areas of entry, rates, financial matters, and enforcement.

There is no question, however, that changes have occurred since the enactment of the Motor Carrier Act, the Household Goods Act, and the Bus Regulatory Reform Act. These pieces of legislation were specifically designed by Congress to substantially reduce many aspects of our prior regulation, and they were intended to foster a more competitive marketplace for transportation services. The Commission's regulatory posture has focuesd upon maintaining an area in which all carriers are able to compete in a freer and more equitable manner, while at the same time, safeguarding the public interest consistent with the Congressional directives set forth in the three laws.

Question In your testimony you expressed your support for total deregulation of the trucking industry. Other than safety and insurance, are there any current regulations which you believe should be retained?

Answer. In addition to the retention of safety and insurance provisions, the protection afforded shippers by the Carmack Amendment should be retained. The same rationale used in your freight forwarder bill, to keep the Carmack Amendment for freight forwarders, is equally applicable to motor carrier deregulation in general.

Also, the household goods consumer protection provisions should be retained. Consumers of household goods services are not represented by large lobbying or interest groups and are mainly comprised of individuals who infrequently utilize such services. In my view, the consumer protection function should remain at the ICC as long as the Comission regulates the bus industry, because of the similarities of the consumers of both these services and the Commission's long-standing expertise in these areas. However, if and when the Commission's responsibilities are limited to just rail matters, I would favor transferring the consumer protection function to DOT.

Finally, I believe that there is a real need to address the matter of antitrust immunity for household goods van line agents. DOT's proposal to retain this immunity for three years fails to address the fundamental problem of maintaining efficient and beneficial relationships between van lines and their agents. Perhaps an amendment of the antitrust laws should be considered.

QUESTIONS OF SENATOR HOLLINGS AND THE ANSWERS

Question. After all the analysis that the Commission does on the motor carrier industry, which do you believe has a greater effect on the condition of that industry, deregulation or the overall economic state of the country as a whole?

Answer. Both deregulation and the overall economic state of the country have independently and jointly affected the condition of the motor carrier industry. Unfortunately, it is difficult, if not impossible, to assess their separate effects. The General Accounting Office concluded that the recession and not deregulation was the primary cause of business failures and unemployment in the motor carrier industry in the early 1980's.

However, certain observations can be made. The state of the overall economy and level of the gross national product are powerful determinants of overall national tonnage and the demand for transportation service. These factor, in turn, have a direct impact upon industry pricing practices and total industry revenues.

A number of changes have occurred in the industry as a result of the freedoms provided by the Motor Carrier Act of 1980 (MCA 1980). These include broader managerial flexibility; a 68.5-percent increase in the total number of motor carriers holding ICC authority and a 6,000-percent increase in the number of brokers holding such authority; restructuring of carrier operating authorities and systems; redistribution of TL and LTL traffic; more intense pricing and service competition; a strong rise in non-union operations; integration of private and for-hire operations; and productivity gains inspired by competition.

It was, of course, expected that the MCA 1980 would create marketplace pressures on the less efficient carriers which had previously been protected by restrictive entry policies and regulatory rate floors. The recession in 1981–82 added to those

pressures, and many of the weaker firms fell by the wayside. At the same time, however, thousands of new carriers successfully entered the market. Most of these new carriers and the well managed older carriers survived and prospered despite the recession. They did so by reorienting market strategies, improving service, and making productivity gains far beyond those achievable under regulation.

Question. In your review of 10 reports and papers on small community service, which you state has "been at least as good" since deregulation, you cite 5 studies of Arizona and Florida, which have been subjected to state deregulation as well. In addition, your most recent study is two years old. Does the combination of these two factors lead you to believe that the Commission has the most up-to-date, broad-based data available?

Answer. Studies on small community service which have been conducted since the Commission developed its September 1, 1982 report, as mandated by Congress, have not utilized as broad a data base as the one on which the Commission developed its study.

However, the 10 reports and papers to which your question refers had conclusions similar to those reached in the Commission study. Additional studies referred to by the Department of Transportation in their September 9, 1985 testimony during the Senate Oversight Hearing also concluded that service to small communities remained relatively stable subsequent to the Motor Carrier Act.

The Commission remains alert to small community service complaints, whether they are received from members of Congress, shippers, or consigness. At the September 9th Senate Oversight Hearing, we pointed out that the number of complaints to the Commission concerning service to small communities has declined each year since 1980, and that we received only 10 such complaints during the 10-month period ending July 31, 1985. This continuing decline in the number of complaints received, coupled with the results of numerous independent studies, is convincing evidence that the overall level of service to small communities is satisfactory.

Viewed in the context of the above information, the Commission has considered it unnecessary to channel its relatively scarce resources into further study of small community service.

Question. You note in your statement that competition among carriers has resulted in lower rates and increased price/service options for shippers. To what extent are carriers under-pricing the cost of their services? What studies has the Commission recently conducted in the area of predatory pricing?

Answer. The Motor Carrier Act provided motor carriers significant freedom to choose the pricing strategy, route structure, and mix of commodities and shipment sizes that management determines to be the most efficient and profitable. Pricing freedom (and rate discounting) should not be viewed in isolation but, instead, as a part of these greater operating freedoms granted carriers.

It was expected that the MCA would lead to some changes in industry structure as carriers utilized the Act to achieve more efficient operations. In competitive markets, such as trucking services today, price changes mirror changes in efficiency. These price changes cause traffic to shift to the most efficient carriers and route systems.

Trucking is a naturally competitive industry, with low entry costs, limited economies of scale, and mobile production units. In such an industry, even the most well capitalized competitor does not have the ability or incentive to successfully pursue a predatory pricing strategy. The successful predation scenario first involves below cost pricing in the short term to drive out thinly capitalized rivals; it then involves the long term reaping of monopoly profits which exceed the short term losses incurred by the predator in achieving its monopoly position. But in trucking today there can be no expectation of monopoly profits. Absent stringent regulatory control on entry, there is no way for the predator to keep out new competitors when rates are raised above a competitive level.

The Commission's most recent study on this subject was conducted in Ex Parte No. MC-166, "Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980," served September 13, 1983, (copy attached). We found no evidence of predatory pricing at that time; nor have we seen any such evidence since. We understand that an additional study on motor carrier pricing may soon be forthcoming from the General Accounting Office.

Question. Last year, the commission rejected a petition to withdraw antitrust immunity for collective ratemaking for small shipments. In light of this action, does the Commission support the continuation of antitrust immunity for the trucking industry? Please explain with reasons why you do or do not.

Answer. In Ex Parte No. MC-172, "Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments", the Commission solicited comments on whether some or all antitrust immunity for collective ratemaking should be withdrawn for motor carriers of property. After receiving comments and holding oral argument, we concluded that the evidence of record was insufficient to support the withdrawal of antitrust immunity for collective ratemaking by the Commission. However, in our view the comments and testimony represented a substantial contribution to the ongoing debate on this issue. For that reason, we certified the full record to Congress as a supplement to the record and recommendations previously developed by the Motor Carrier Ratemaking Study Commission.

However, we felt the comments and testimony represented a substantial contribution to the ongoing debate on this issue. For that reason, we certified the full record to Congress as a supplement to the record and recommendations previously developed by the Motor Carrier Ratemaking Study Commission.

In discontinuing the Ex Parte No. MC-172 proceeding, the Commission did not reach a decision on the merits of retaining antitrust immunity for motor carriers. Instead, it is the Commission's view that the future of motor carrier antitrust immunity is a matter which Congress should resolve.

Subsequently, in oversight testimony on the Motor Carrier Act of 1980 the Commission testified that shipper interests were protected by competitive marketplace regulation of the trucking industry and that the Commission supported the current legislative proposals leading to complete deregulation of the trucking industry. Both H.R. 3222, the "National Motor Carrier Productivity and Safety Improvement Act of 1985," introduced by Congressman Moody, and the Department of Transportation Bill transmitted by the Secretary of Transportation provide for elimination of antitrust immunity for the trucking industry.

Senator PACKWOOD. Next, we will take Philip Haseltine, Deputy Assistant Secretary for Policy and International Affairs of the U.S. Department of Transportation.

Mr. Haseltine, let me say to you and the rest of the witnesses, we will adhere to the 5-minute time rule. With the exception of those two witnesses I told you about, I have read all of your testimony. We will run this hearing—it is a long hearing—right through the noon hour. We will take no break. So for those witnesses who are later on, don't go out for a lunch break about 11:30, thinking you are not coming on until 2 o'clock. We will continue right straight through until we are done.

Go right ahead, Mr. Secretary.

STATEMENT OF PHILIP W. HASELTINE, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION

Mr. HASELTINE. Thank you, Mr. Chairman. I have submitted a longer statement for the record. I will summarize it orally.

Mr. Chairman, thank you for inviting us here today to discuss the administration's views on economic regulation of motor carriers. And let me add that those of us who share your interest in trucking deregulation are very pleased that you have taken the time from your very busy schedule to remain actively involved in this important issue. It is most important to all of us.

The Motor Carrier Act of 1980 has been now in effect for more than 5 years. For much of that time, the trucking industry was burdened by weak demand for its services. However, even during difficult times, the industry as a whole continued to provide good service to shippers and receivers throughout the Nation.

Overall, there is an enormous body of evidence that the MCA has had significant positive effects on the trucking industry. With the freer entry permitted under deregulation, there are now substan-

tially more trucking firms in business. New price and service options have been introduced. Established carriers have become more efficient and innovative; for example, by restructuring routes, reducing empty backhauls, providing simplified rate structures, and offering shippers incentives to move freight more efficiently.

Shippers are becoming more sophisticated and now play a far more active role in the distribution process. The improvement in motor carrier financial results that began in 1983 continued strongly into the first half of 1984. However, about the fourth quarter of 1984, large carriers' profitability began to weaken, although tonnage and revenues—and I think that is important—tonnage and revenues continued to increase, and vigorous price competition continued to exert an influence on carriers' profitability as overall economic conditions improved.

I am pleased to report that the unemployment rate in the trucking industry has come down sharply from the recession-induced high of 13 percent in 1983 to 8 percent in 1984, and that is only slightly above the level for the civilian labor force as a whole.

As for motor carrier failures, the high correlations between failures of intercity carriers, local carriers largely unaffected by the Motor Carrier Act, and total U.S. business failures, strongly suggest that deregulation is not the principal cause. Economic conditions, weak management, overly ambitious mergers and expansions, as well as rising insurance costs, have also led to carrier downfalls.

Failures in the period 1980–84 represent under 1 percent of all ICC-regulated carriers and about 3 percent of the class I and II carriers operating in 1984.

Questions have been raised about the effect of relaxed motor carrier entry on highway safety. We have carefully monitored the trucking industry's safety record since implementation of the MCA, and have found no statistical evidence linking the presence or absence of economic regulation with the safety performance of motor carrier operations.

Safety continues to be one of DOT's highest priorities. However, truck safety can be better maintained by providing appropriate safety regulations, enforcement and sanctions, than by maintaining an outdated economic regulatory framework that has no link with safety performance. The Motor Carrier Safety Assistance Program, or MCSAP, is now providing increased levels of funding to the States for this purpose.

We have heard numerous carrier complaints about the lack of availability of liability insurance and significant increases in premium rates. This is not the result of deregulation. Recent news reports indicate that most of the professions and many businesses, including trucking companies, are experiencing steep premium increases and difficulty acquiring liability insurance. The origins of the problem are not simple and the solutions are not simple either. The Department is aware of the problem. We are studying it to see what, if anything, should be done at our level.

Another concern expressed by opponents of reform was that truck service to small communities would suffer. DOT has been studying this issue, as you know, Mr. Chairman, since 1979. The most recent phase of our study in 1984–85 found, once again, that

service quality and quantity has not diminished for the vast majority of shippers and receivers located in small communities surveyed in this investigation.

The latest phase of DOT's multiyear study of the results of total economic deregulation of trucking in Florida and Arizona shows improvements in truck service resulting from intrastate deregulation. The generally favorable results were noted by shippers and receivers in widely varying locations, including a large number of respondents from small communities.

The final phase of this study examined pre- and post-deregulation, interstate and intrastate motor carrier rates for selected routes in Arizona and Florida. Many have argued that the removal of antitrust immunity for collective ratemaking would have little or no impact on interstate truck rates, now that the Motor Carrier Act has provided easier entry into trucking. However, the results of the study strongly suggest that removal of immunity would provide additional benefits. In all routes studied in Florida and Arizona, intrastate rates rose more slowly than interstate rates after State deregulation removed antitrust immunity from intrastate rates.

In summary, Mr. Chairman, many opponents of truck deregulation argued that passage of the Motor Carrier Act would result in poor service to shippers, with many residents of rural areas unable to obtain service at any price. These fears have been proven groundless, as truck services remain good, even in the most remote areas.

Reforms provided by the Motor Carrier Act comprise a first good step toward complete deregulation of the trucking industry. We believe that now is the time to consider taking the final steps necessary to complete that process.

Mr. Chairman, this concludes my prepared statement. I would be now glad to answer any questions that you may have.

Senator PACKWOOD. There will be, at a subsequent hearing this month, testimony from the insurance industry about trucking insurance. I think there is some sense they are trying to duck this issue; they are not. They are not here today, but they will be testifying in full on that subject later this month.

Mr. Haseltine, I have been through, since I have been a member of this committee or the ranking member of it, airline deregulation, trucking deregulation, and partial rail deregulation. With the exception of rail, in both trucking and airlines it had to be done over the objection of the industry and of the union representing the employees in the industry.

It could not have been done—and the Carter administration deserves great credit—without the extraordinary push of the administration. With that push, Congress was willing to go along, even over the objections of the industry.

I have always found it an anomalous situation because both of those industries at the time complained about the heavy hand of Federal regulation, and when they actually saw the deregulation bills we were talking about, they in essence said we didn't mean that kind of deregulation.

The situation has not changed now. This Congress will give great deference to the administration. That is clearly true in the tax situ-

ation. There is no overwhelming demand for passage of a tax reform bill in the country, but we are going to pass one because the administration very desperately wants it and they will get it. And we will pass it.

As far as further truck deregulation is concerned, however, you will notice in the statements coming from the Teamsters later on and from the American Trucking Associations, they don't want to go ahead anymore right now.

That means if the administration wants this, the administration is going to have to push it, not just endorse it—push it. Where is the administration's bill?

Mr. HASELTINE. It is in final clearance process.

Senator PACKWOOD. That was true 4 months ago.

Mr. HASELTINE. It is now outside of the Department of Transportation. I expect that in a very short period of time, the administration will be in a position to come forward with the bill. We, quite frankly, have not seen any significant disagreement within the administration on strategy. I think the legislation drafted within the Department will in fact become the administration's bill, and I think within a matter of a very few weeks, Mr. Chairman, we will see that bill move forward and I am fully confident that it will have not only the endorsement—the President, as we all know, said in his State of the Union Message last January, he wanted to move forward; but I think you will have not only the endorsement, but the active support of the entire administration in seeking its enactment.

Senator PACKWOOD. Well, "active" is a critical word because this cannot be just dropped on the doorstep like an abandoned baby and say ta-ta, and here it is, and off we go. I think I am going to have some minor trade problems this fall.

Mr. HASELTINE. We are cognizant of those.

Senator PACKWOOD. And I think a tax reform bill. And I am willing to spend a great many hours and time on further deregulation, but not all by myself. So I cannot impress upon you too strongly how critical it is that the administration push it, not just support it.

Now, let's talk about safety, as I did with the Chairman of the Commission. How are you coming along on safety?

Mr. HASELTINE. We think we are making a great deal of progress in a number of areas. As I mentioned briefly in the testimony, we have the major new grant program for safety enforcement personnel in place. We now have some 1,500 motor carrier inspectors at the State level, and quite frankly we believe that most of the motor carrier inspection function should and must, and in the foreseeable future, will reside at the State level and we are working very closely with the States to do that.

We have recently undergone a reorganization within the Federal Highway Administration; just last week, Secretary Dole announced a new Associate Administrator for Motor Carriers within the Federal Highway Administration whose tasks will be to serve as the primary focal point in the DOT for motor carrier transportation matters and to streamline the management and operation of BMCS, both its inspection activities and its regulatory activities. Moving Burcs to the new Associate Administrator and strengthen-

ing its direct line authority over its field offices will vastly increase the visibility of the BMCS function within the Department.

We also had last week the first meeting of the Motor Carrier Safety Regulatory Review Panel which was, as you know, Mr. Chairman, required by the Motor Carrier Safety Act of 1984. That panel has initiated the process of reviewing all of the safety regulations, both statutory and administrative regulations, from the 50 States. That is a voluminous task, but it has started and it is proceeding, and we will meet the deadlines of the act for that as well.

We have several other areas of progress. The civil penalties that were also a part of that Safety Act of 1984 have just gone into effect, so BMCS will now have, for the first time, a much more streamlined mechanism for dealing with motor carriers who in fact violate BMCS regulations. So we have a number of things——

Senator PACKWOOD. Can I interrupt? Did you say earlier you are going to leave to the States the bulk of the enforcement of the safety regulations?

Mr. HASELTINE. I think that has traditionally been the case and is certainly the case now. Right now, there are some 150 BMCS inspectors, and there are probably 1,500 motor carrier safety inspectors at the State level.

State inspectors exceed BMCS inspectors by a factor by magnitude of 10, so that is where the bulk of the action is right now. Again, we are talking only safety inspections, Mr. Chairman, that portion of the BMCS functions. But I think it is very clear—just by the size of the numbers of inspectors and the increase from getting up to speed on the MCSAP program—that clearly the States have a lot more resources available for inspections than does BMCS.

Senator PACKWOOD. The reason I asked you that is that there are going to be, throughout the entire list of witnesses today, statements about unnecessary State regulation—under the guise of something other than regulation, but ending up being regulation. I think most of those statements are true, and I hope we don't get into a situation where safety is used as an excuse for economic regulation or limited entry.

Mr. HASELTINE. First of all, the Motor Carrier Safety Regulatory Review Panel is reviewing—and the Motor Carrier Safety Act 1984 gave us this opportunity, in fact gave the Secretary this responsibility—all State safety regulations for comparability with the BMCS Federal regulations. Those State regulations which are less stringent, we preempt. Those which are comparable, fine. Those which are more stringent than the Federal regulation, then the Secretary will make a determination as to whether there is a safety benefit or if, in fact, they fall into the category you mentioned, in which case we would preempt those.

Those are safety regulations only. And I think that is entirely different, Mr. Chairman, from the case of economic regulation at the State level, first of all; and second, it is entirely different from the other very cost-consuming feature of State regulation of motor carriers, and that is the registration and tax reporting functions which we are also addressing, but trying to address short of preemption, if we can, through a contract that we have entered into with the National Governors' Association. We have a first report

on that effort due within a few months, I believe—and don't hold me to that date—in the near future.

But I think we need to separate those three areas when we look at the kinds of difficulties truckers can run into from State regulation: State economic regulation, State safety regulation, and then the myriad of registration, titling, stickers, tax reporting forms; those kinds of regulations, sir.

Senator PACKWOOD. Senator Danforth.

The CHAIRMAN. Mr. Chairman, thank you very much. Mr. Secretary, I am sorry I just got in midflight, so to speak, and I did not really have the opportunity to hear all of your testimony. But what is your view of the financial state of trucking today as a result of deregulation, the increased fuel tax, and the economic ups and downs of the past few years generally in the economy?

Would you view the trucking industry as a healthy industry right now, or one that is more shaky?

Mr. HASELTINE. I view it as a generally healthy industry which is one which is not without problem pockets, if you will. I view the financial health of the industry as improving. Certainly it has improved dramatically since the 1982 recession in terms of employment within the industry, in terms of profitability, tonnage, and revenues.

I think by all of those measures, clearly the industry has been improving. Those trucking firms which have in fact gone out of business or have gone bankrupt in the last few years are for the most part firms that were in precarious financial situations prior to deregulation. We don't see any particular linkage there, No. 1.

And second, as for those firms that have had difficulty, either marginal operators, or those who have gone out of business, we see no single reason for their problems. In some cases, it has been high labor costs; in some cases it has been poor management; in some cases it has been expansion too quickly, too broadly.

The CHAIRMAN. Well, there is no doubt that the trucking industry has received at least three jolts. I mean whether they are good jolts or bad jolts, I think some of them would argue that they are not so good.

One is deregulation. One is the increased taxes that they have to pay, fuel taxes. And the third is the effect of economic downturns, particularly in the early 1980's.

It was my impression that this created, to say the least, a sense of uncertainty and maybe instability with respect to the trucking industry. Is that a correct assumption?

Mr. HASELTINE. Our studies and our analysis shows, Senator, that the economic recession was probably by far the greatest factor, and I would think probably followed by the fuel tax increase the effects of which we hopefully, last year, mitigated somewhat by the diesel differential tax, in reducing the heavy vehicle-use tax.

But again, we see no direct linkage between the overall health of the industry and deregulation. Certainly, some individual trucking firms have been hurt by economic deregulation, but we think the industry as a whole has not.

The CHAIRMAN. Do you think that Congress could give the trucking industry a period of breathing time now? Do you think that it would be a good thing to let the dust settle a little bit in the truck-

ing industry? Or do you think that we should continually change the rules?

Mr. HASELTINE. We believe that the time for motor carrier deregulation is now. The Motor Carrier Act has been in effect for 5 years. The economic problems of the early 1980's have subsided and we have been in a period of expansion. Employment in the industry has increased; profitability has increased. Truckers continue to do well competing with rails, barges, and other modes.

We think the time to move forward with further economic deregulation is in fact now, Senator.

The CHAIRMAN. I frequently hear business people say we could live by any set of rules Government gives us; just don't keep changing the rules. Do you think that there is a reasonable basis for that comment in the trucking industry?

Mr. HASELTINE. Not with regard to economic deregulation. There has been no secret that a number of sources have been interested in moving forward with further deregulation for several years. We enacted the MCA, and tried it for 5 years. The Chairman has stated his interest in moving forward. We have stated our interest in moving forward.

The CHAIRMAN. That Chairman has stated his interest in moving forward.

Mr. HASELTINE. Mr. Chairman, I was referring to that Mr. Chairman.

The CHAIRMAN. Let me ask you a question that would be of interest to the Chairman of the Finance Committee. We are very concerned about tax policy now, and the whole question of equity—who gets taxed, how much, whether everybody is paying their fair share of taxation, and the competitive effects of different tax rates on competitive industries.

It is my understanding that the effective tax rate on the trucking industry is quite high compared to railroads. Is that right?

Mr. HASELTINE. If you look at tax rates alone, that is correct, Mr. Chairman. If you look at the overall manner in which those industries are capitalized and function and are taxed, I think you get a somewhat different picture, and I would be more than pleased to provide some numbers in that regard for the record that I think would be of interest to you.

[The following information was subsequently received for the record:]

As I noted, the railroads and trucks differ substantially in their capital structure and investment requirements. The railroads own their own rights-of-way and must invest substantial amounts to build and maintain the track network. Their truck competitors operate on public highways, supported by tax revenues collected from all highway users, and their major capital expenditures are therefore only for the trucks and any auxiliary facilities required.

The Congress has recognized the railroads' need to make heavy capital investments, and has included railroads under tax provisions designed to assist all capital-intensive industries to invest in and maintain their physical plant. For example, in assessing their income for Federal tax purposes, the railroads, along with other industries, can use both investment tax credits and the shorter depreciation schedules (Accelerated Cost Recovery System or ACRS) established by the Economic Recovery Tax Act of 1981 (ERTA). Other modes of transportation also benefit from those programs to the extent they are undertaking investments in depreciable assets.

The railroads have also been subject to a change in their system of accounting. Prior to ERTA, railroads used an accounting system called "Retirement-Replacement-Betterment" (RRB), which required them to value track and other capital

structures at original investment cost, and not revalue or depreciate them. Along with the changes in depreciation schedules in ERTA, the railroads were for the first time given the right to depreciate the value of these investments. Railroads now follow the same accounting practices as other industries, and report their income for tax purposes using a depreciation accounting system.

To smooth what would have been an abrupt change from RRB to depreciation accounting, ERTA allowed the railroads to write-off their track asset base over a 5–50 year period. Most carriers chose 5 years, in order to maximize tax benefits. This, coupled with the othe reffects of ERTA, has meant that the rail industry's federal income tax rates have been substantially below those of the motor carrier industry since 1981. However, most of the asset base has now been written-off, pushing the railroads' effective tax rate upward.

Based on a report prepared by the Joint Committee on Taxation, 1982 effective tax rates were about 4 percent for railroads and about 37 percent for motor carriers, but the effective tax rates for the two modes should be moving closer together. According to the Association of American Railroads (AAR), 1984 average tax rates were about 7 percent for railroads and about 23 percent for trucks, and the AAR projects that the average tax rate for major railroads for 1986–1991 will range between 22 and 27 percent.

The CHAIRMAN. I would be very happy to see those numbers, because everything that I have been told is that the trucking industry is taxed very heavily compared to its chief competitor, the railroad industry. And if that is not so, I would like to see your numbers.

Thank you, Mr. Chairman.

Senator PACKWOOD. I have no other questions.

Mr. Secretary, thank you very much.

[The statement follows:]

STATEMENT OF PHILIP HASELTINE, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION

Mr. Chairman and Members of the Committee, thank you for inviting me here today to discuss the Administration's views on economic regulation of motor carriers. I might add, Mr. Chairman, those of us who share your interest in trucking deregulation are very pleased that you have taken time from your busy schedule to remain actively involved in this important issue.

The Motor Carrier Act of 1980 (MC) has now been in effect for more than five years. For much of that time, the trucking industry was burdened by weak demand for its services. However, even during difficult times, the industry as a whole continued to provide good service to shippers and receivers throughout the nation.

Overall, there is an enormous body of evidence that the MCA has had significant, positive effects on the trucking industry. While the recession of 1981–1982 caused substantial traffic declines and financial lossess for much of the industry, the industry as a whole has been making the necessary adjustments to today's more competitive environment and has returned to profitability with the upturn in the overall economy.

With the freer entry permitted under deregulation, there are now substantially more trucking firms in business. The number of firms with Interstate Commerce Commission operating authority has grown—from roughly 18,000 in 1980 to almost 31,000 in 1984.

Service Benefits

New price and service options have been introduced. Established carriers have become more efficient and innovative, for example, by restructuring routes, reducing empty backhauls, providing simplified rate structures, and offering shippers incentives to move freight more efficiently.

As impressive as the immediate benefits of deregulation have been, the long-term results may be even more significant. Overall distribution productivity is benefiting from improved information and inventory management systems, as well as from the greater transportation efficiency made possible by regulatory reform. Together, these trends are resulting in a virtual distribution revolution. One executive of a major transportation company believes that the net result has been a multi-billion dollar reduction in annual logistics expenditures in the United States.

As one step in broadening our understanding of the impact of trucking regulatory reform on the overall distribution systems of shippers and receivers, DOT recently commissioned a series of indepth interviews with nine companies. Preliminary results from these interviews confirm what proponents of reform have argued—that shippers are becoming more sophisticated and that the new price and service options available allow them to obtain service that better meets their individual needs.

For example, while six of the nine shippers interviewed in this DOT study said that truck service had improved since partial deregulation, "improved service" meant different things to different shippers. However, whether better service meant quicker service, more reliable delivery schedules, or reduced loss and damage, the opportunity existed for shippers to negotiate service that met their specific needs. Although three of the nine shippers noted no improvement in truck service, two of the three nevertheless expressed a preference for deregulation, as opposed to pre-1980 regulation.

Shippers now play a far more active role in the distribution process. They have a hand in negotiating rates and a greater choice in selecting carriers. They can consolidate shipments themselves or through third parties, contract for particular services, and work with carriers to design transportation services best meeting their overall needs. Brokers and shipper associations are consolidating an increasing number of less-than-truckload shipments, "topping off" loads, and otherwise helping the trucking industry to operate efficiently.

Financial Results

The improvement in motor carrier financial results that began in 1983 continued strongly into the first half of 1984. For the twelve months ending June 30, 1984, the large motor carriers reporting to the ICC showed a gain in net operating income from $464 million to $724 million. Overall net income rose from $252 million to $407 million and return on equity increased from 8.76 percent to 12.93 percent. However, by the fourth quarter of 1984, large carriers' profitability began to weaken. Net carrier operating income decreased during the fourth quarter by 5 percent, and net income was down a little less than one percent. At the same time, tonnage and revenues continued to increase, rising by 8.3 percent and 2.3 percent, respectively.[1] These figures suggest that vigorous price competition continued to exert an influence on carriers' profitability as overall economic conditions improved.

Employment

I am pleased to report that the unemployment rate in the trucking industry has come down sharply from the recession-induced high of 13 percent in 1983 to 8 percent in 1984, which is only slightly above the rate for the civilian labor force as a whole. Furthermore, it should be noted that total employment in the trucking industry is at its highest level in a decade; and the trucking umemployment rate is at its lowest level since 1980.

Bankruptcies

Some have expressed concern about motor carrier bankruptcies, particularly as failures of large, well-established companies have been reported in the press. It was anticipated at the time of the passage of the MCA that weaker companies would not be able to withstand the added competition the Act encouraged. In fact, many of the companies that were unable to survive were unprofitable before the MCA and the recession made their traffic base more tenuous. Prior to the MCA, these companies might have been acquired by other carriers for their then valuable operating rights and, thus, avoided bankruptcy.

A large number of failed carriers were unionzed (the Teansters report 58 general freight carriers has failed as of February 1985) and had difficulty competing with lower cost firms; and many companies participated in discount wars, not fully aware of the costs they had to cover. Weak managment and overly ambitious expansions and mergers also led to carrier downfails. Recently, rising insurance costs have reportedly been a contributing cause of some carrier failures.

Moreover, the high degree of correlation between failures of intercity trucking companies, local carriers (who were largely unaffected by the MCA), and total U.S.

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[1] It should be noted that, as regulatory reform has made it easier for all types of carriers to compete for traffic, it has become progressively more difficult to interpret the existing data bases (which represent only a limited number of large carriers). For example, a decrease in tonnage hauled by the 100 largest carriers would not necessarily mean that overall motor carrier tonnage was down. There could be a corresponding (or even greater) increase in the tonnage hauled by smaller common, contract, and private carriers.

business failures, strongly suggests that deregulation has not been the principal cause of motor carrier failures.

The number of ICC-regulated firms that have failed is small, compared to the number operating. According to Dun and Bradstreet and American Trucking Associations statistics, carriers that have failed since 1980 represented less than one percent of all ICC-regulated carriers and about 3 percent of Class I and II carriers operating in 1984.

I want to point out, moreover, that well-managed union and non-union companies are thriving. And, because of the substantial increase in the total number of firms offering service, customers have not suffered as a result of the bankruptcies. As discussed below, even most rural shippers report that service remains good and the availability of carriers continues to be satisfactory.

Safety

Questions have been raised about the effect of relaxed motor carrier entry on highway safety. We have carefully monitored the trucking industry's safety record since implementation of the Motor Carrier Act of 1980, and, and we expected prior to deregulation, have found no valid statistical evidence linking the presence or absence of economic regulation with the safety performance of motor carrier operations. Truck accident rates are about one accident per million miles for unregulated (exempt) carriers as well as for common and contract carriers.

The Department, through its Bureau of Motor Carrier Safety and National Highway Traffic Safety Administration, is continuing to set and enforce federal truck safety standards and to work with the states to improve their inspection and enforcement efforts.

The Motor Carrier Safety Assistance Program (MCSAP) is now providing increased levels of funding to the states for this purpose. MCSAP, authorized by the Surface Transportation Assistance Act of 1982, is a cooperative endeavor between the Federal Government and States to enforce uniform Federal and State safety, hazardous materials requlations, and rules applicable to commercial motor vehicles and their drivers. One of the criteria a state must meet in order to qualify for an implementation grant is that the state adopt and enforce the Federal Motor Carrier Safety Regulations (FMCSR's) or similar state rules that are compatible with the FMCSR's. The objective of the program is to reduce truck and bus involvement in collisions by minimizing the hazards associated with large commercial motor vehicles on the Nation's highways.

Fiscal year 1985 is the first full year of the MCSAP. Fortynine states are participating in the program, 28 in implementation. Again the principal implementation activity will focus in the area of recruitment, hiring, and training of state enforcement personnel. At the completion of the fiscal year an additional 1,500 state enforcement officers are projected to be trained in uniform roadside inspection procedures and enforcement activites. This will result in an estimated 300,000 roadside ispections. In addition, state grantees will initiate the development of Managment Information System to compile improved roadside inspection and enforcement data.

Highway safety remains one of the the Department's highest priorities. The special Safety Task Force established by the Secretary is reviewing the Department's programs to ensure that we are acting in strict compliance with our safety responsiblities. In additions, we will continue to assess the safety record of the motor carrier industry to assure that safety problems are quickly identified and solutions speedily implemented. We are convinced, however, that truck safety can be better maintained by providing appropriate safety regulations, enforcement, and sanctions than by maintaining an outdated economic regulatory framework that has no link with safety performance.

Insurance

We have heard numerous carrier complaints about both the lack of availability of liability insurance and significant increases in premium rates. This is not the result of deregulation. Recent news reports indicate that most of the professions and many businesses, including trucking companies, are experiencing steep premium increases and difficulty in acquiring liability insurance. The insurance industry had been charging low premium rates when it could invest its funds at high interest rates. When liability awards in other underwriting areas reached new highs and interest rates fell, the insurance industry suffered losses it is now trying to recover.

The insurance industry is generally opposed to the higher mandated levels of financial responsibility that became effective January 1, 1984. They claim that the market place was working adequately at the lower interim levels and that there is no evidence available that supports the higher levels. Recently, the BMCS requested specific loss information from the insurance industry. It received a 7-year history

from one of the Nation's largest insurers, of accidents that resulted in payments or reserves in excess of $1 million. During a 7-year period (1978–84), the company was involved in 22 accidents involving $1 million settlements or reserves. Fourteen of these 22 involved commercial motor vehicles subject to Federal regulation.

The insurance industry also perceives a problem with the term "environmental restoration" whereby, under section 30 of the MCA, carriers would be required to clean up spills of hazardous materials. It seems that the industry is concerned about possible court decisions involving long-term residual damage. Insurers have told BMCS personnel that the insurance industry does not know what "environmental restoration" is. Because of this perceived problem, based on the unknown, the industry is very reluctant to insure a motor carrier for $5 million or more.

The origins of the problem are not simple, and the solutions are not simple either. The Department is aware of the problem and is studying it to see what, if anything, should be done.

DOT Research

In addition, I would also like to share with you the results of our most recent studies of the impact of regulatory reform on various segments of the trucking industry. Research concerning service to small communities and the impact of intrastate trucking deregulation demonstrates that reform continues to work well.

Small Community Service Study

DOT has been studying small community service since 1979. The most recent phase of one such study (1984–1985) reaches essentially the same conclusions as the previous post-deregulation phases (1980–1983): service quality and quantity have not diminished for the vast majority of shippers and receivers located in small communities surveyed in this investigation. In fact, the number of competing carriers serving rural areas has increased, on balance, since the passage of the MCA.

For most shippers, little has changed since the first phase of the study in 1979–1980: there is a heavy dependence on United Parcel Service for small package shipments; considerable use of private carriage; and generally acceptable levels of freight service available from a variety of ICC-certificated carriers. Although rates have increased somewhat for the typical rural shipper, service quality and the level of competition among carriers are both higher. Improvements in service quality and competition were reported much more often than deteriorations, regardless of the remoteness of the shipper or receiver's location.

Overall, 98 percent of all respondents thought that post-deregulation truck service was as good as or better than before. Moreover, shippers and receivers in very remote areas were as satisfied with their truck service as were small community respondents in more accessible areas: 97.3 percent of the really rural shippers and receivers—those more than 25 miles from an interstate highway—reported that overall service quality was as good as or better than pre-deregulation service.

In general, shippers and receivers in the small communities surveyed continue to receive adequate truck service, with no respondent finding service unavailable.

Intrastate Trucking Deregulation in Florida and Arizona

A multi-year study was undertaken for the Department to survey shippers, for-hire carriers, and private carriers in Florida and Arizona, in order to examine the effects of removing all economic regulation of trucking in these two states. In 1981, faculty members from the Universities of Florida and Kentucky surveyed 673 shippers and carriers throughout Florida for their views on deregulation. In 1982 and 1984 their survey was expended to over 1800 shippers and receivers throughout both Florida and Arizona. Although we have more years' data for Florida (which deregulated in 1980) than for Arizona (which deregulated in 1982), the overall results are remarkably similar.

Florida

The latest phase of the study shows that in 1984, as in previous years, shippers and receivers noted improvements in truck service resulting from the removal of all economic regulation of Florida's intrastate trucking in 1980. About 87 percent believed that post-deregulation service was at least as good as before, with approximately 33 percent of the respondents noting improvements in service, and only about 13 percent citing decreases. Faster service and reduced difficulty in arranging truck transportation were reported about twice as often as slower service or increased difficulties.

A majority of all shippers and receivers (55 percent) perceived that deregulation had held down truck rates. Similarly, 50 percent of the respondents reported increased truck competition, while only 5 percent noted less competition.

The generally favorable results were noted by shippers and receivers in widely varying locations, including a large number of respondents from small communities. Not surprisingly, given their perceptions of the impact of deregulation on their truck service, the vast majority of respondents preferred deregulation to regulation.

As a group, shippers, receivers and private carriers were more favorably disposed toward deregulation than were for-hire carriers. Sixty-eight percent of private carriers expressed a preference for deregulation, but only 28 percent of for-hire carriers preferred deregulation.

Arizona

After almost three years experience with intrastate trucking deregulation in Arizona, shippers and receivers were very positive about the results. The vast majority of respondents (70 percent) noted increased competition, with only 10 percent citing less competition. Similarly, 48 percent faced an increased number of service options, while only 23 percent saw fewer options. No shipper or receiver reported that motor carrier service was unavailable.

Roughly half of all respondents felt that overall service quality had improved since deregulation, compared with only 8 percent noting service deteriorations. In addition, deregulation was widely believed to have a moderating influence on rates. Fully half of all respondents felt that deregulation had held down rates, whereas only 10 percent believed it had resulted in higher rates.

As in Florida, it is not surprising that Arizona shippers and receivers surveyed reported satisfaction with deregulation. A large majority (72 percent) preferred deregulation, while only 5 percent expressed a desire to return to regulation.

As a group, Arizona for-hire carriers were more enthusiastic about deregulation than were their Florida counterparts. Forty-two percent expressed a preference for deregulation, while only 34 percent preferred regulation. The remaining carriers expressed no preference.

Impact of Deregulation on Freight Rates in Arizona And Florida

The final phase of this study examined pre- and post-deregulation interstate and intrastate motor carrier rates for selected routes in Arizona and Florida. In both states, intrastate deregulation has resulted in surprisingly moderate changes in motor carrier freight rates. Moreover, rates have not become unstable and, therefore, are not difficult for users to determine.

Comparisons of corresponding interstate and intrastate rates reveal that over all routes studied, interstate rates rose at a faster pace than did intrastate rates. This result provides strong support for the belief that total deregulation would provide benefits beyond those already attained through partial deregulation. Further, the results in both states indicate that the premium paid for small shipments has declined since deregulation. In Arizona, the penalty for service to remote areas, levied prior to deregulation, has largely disappeared.

Many have argued that removal of antitrust immunity for collective ratemaking would have little or no impact on interstate truck rates, now that th Motor Carrier Act has provided easier entry into trucking. However, the results of this study strongly suggest that removal of immunity would provide additional benefits. On all of the routes studied n Florida and Arizona, intrastate rates rose more slowly than interstate rates after state deregulation removed antitrust immunity for intrastate rates. This study's findings, coupled with the results of earlier studies which indicate that service levels have been maintained or improved, lead to the conclusion that from the point of view of the shipper or receiver, intrastate deregulation in Florida and Arizona has been a success.

Summary

Many opponents of truck deregulation argued that passage of the MCA would result in poor service to shippers, with many residents of rural areas unable to obtain service at any price. These fears have been proven groundless, as truck service has remained good—even in remote areas—in spite of the effects of the recent recession.

Some opponents of reform argued that, as the economy improved, the deterioration in truck service would finally appear. Let me emphasize that, according to our most recent research, this predicted decline in the quality and availability of truck service has *not* occurred. Small carriers and minority carriers appear to have weathered difficult economic conditions as well as their larger rivals. Service to small and rural communities remains highly satisfactory, even in Florida and Arizona, after they removed all economic regulation from their intrastate trucking industries.

The reforms provided by the MCA comprised a good first step toward complete deregulation of the trucking industry. We believe that now is the time to consider

taking the final steps necessary to complete that process. Any remaining economic regulation of the trucking industry is unneeded and undesirable, because there is ample competition within the industry as well as from other modes. Such regulation suppresses managerial initiative and innovation, and wastes valuable resources that the trucking industry could employ more usefully in improving its productivity.

That concludes my prepared statement, Mr. Chairman. I will now be glad to answer any questions that you or other Members of this Committee may have. I look forward to working with you and the other Members of Committee toward the very important goal of additional economic deregulation of the trucking industry.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question 1. We will hear testimony from some witnesses stating that the ICC has gone beyond the intent of the 1980 Act and has undertaken administrative deregulation of the interstate trucking industry. What is your view of this claim?

Answer. The Motor Carrier Act of 1980 calls for greater reliance on the forces of competition to provide a variety of price and service options, as well as to promote a more efficient trucking industry. We believe the ICC has been implementing the Act appropriately, with this intent in mind.

Question 2. The Motor Carrier Safety Act of 1984 requires DOT and the ICC to develop a new safety fitness determination procedure for motor carriers. When do you expect final regulations implementing this provision to be issued?

Answer. A draft regulation is currently under review within DOT. The subject entails a number of complex issues, which we are striving to resolve as promptly as possible. We anticipate that the draft rule will go to OMB for review in the near future.

QUESTIONS OF SENATOR HOLLINGS AND THE ANSWERS

Question 1. Mr. Haseltine, in your testimony, you discuss DOT's nine shipper survey and the fact that two of those shippers preferred deregulation even though they had received no improvement in truck service since 1980. What reasons did these two shippers give for taking this position? And what about the one shipper that did not like deregulation—what were the circumstances for this position being taken?

Answer. The two shippers favoring deregulation had been able to negotiate rate discounts. They perceived that deregulation had helped hold down their truck rates. The third shipper had seen no effects (either positive or negative) from deregulation. This shipper had developed a personalized long-term relationship with a single motor carrier, and the service obtained from that carrier was very good both before and after partial deregulation.

Question 2. In doing surveys, why doesn't DOT survey the trucking industry on the effect deregulation has had on it, both collectively and individually?

Answer. We did a study of Class III motor carriers, which showed that these small carriers were doing about as well as large carriers. In addition, our studies of intrastate trucking deregulation in Florida and Arizona included surveys of carriers operating in those two states.

The Administration has been trying to decrease the paperwork burden on the private sector and generally frowns upon additional surveys. A survey exploring the effects of deregulation on the entire trucking industry, involving large numbers of diverse types of motor carrier operators, would also be very expensive.

Question 3. In terms of judging the quality of service to rural communities since deregulation, has DOT surveyed shippers who had been served by a now bankrupt carrier and compared that with the relative quality of service provided by any new, replacement carriers?

Answer. In 1981, a labor witness testified in a House Motor Carrier Act oversight hearing that a carrier had closed some of its terminals, resulting in a complete loss of trucking service to 16 named Colorado towns. An informal DOT investigation concluded that none of the towns had been left without service, the majority indicating that service was equal to or better than before the terminals were closed.

During those hearings, a DOT witness stated that DOT had contacted eight shippers who had been customers of a bankrupt firm. Those shippers, located in small towns generally between 2,000 and 5,000 in population, were not affected by the carrier's bankruptcy.

Question 4. You stress the Department's support for complete deregulation of the trucking industry. We have read widely about DOT's bill being held at the White House for review. Is the Administration prepared to submit a bill to the Congress this year to accomplish that objective?

Answer. I am pleased to report that, subsequent to the time these questions were written, the Administration has submitted its trucking deregulation bill to the Congress. Our bill, the Trucking Deregulation Act of 1985, has been introduced in the Senate as S. 1711.

Question 5. You discuss in your testimony bankruptcies and the fact that prior to 1980, a less efficient carrier might have been acquired by another carrier for the operating rights, thus avoiding the current rash of bankruptcies. My question is are we better off today without assurances of continued service that acquisition provided in a regulated environment?

Answer. All of our research concerning post-1980 motor carrier service has shown that such service remains good, even in small, rural communities. If a motor carrier goes out of business, other carriers soon step in to provide the needed replacement service. In fact, some shippers in rural areas report that there are *more* motor carriers serving them today than there were before partial deregulation.

The primary reason motor carrier operating authority was purchased, prior to reform, was that it used to be very difficult to obtain such authority from the ICC. Now that entry is easier, carriers can expand into areas that need more service without having to purchase another carrier or its operating rights.

Question 6. It also seems that unionized trucking firms have been the hardest hit. Does this concern you, and what is the Department doing about it?

Answer. The Department is always concerned about jobs lost. However, as we have noted in our oversight testimony before this Committee, overall jobs in trucking have increased since passage of the Motor Carrier Act of 1980. We find this a positive result of the Act.

Many of the large union companies were unprofitable before the MCA and the recession occurred. Costly labor contracts and inefficient work rules handicapped some carriers. A number of carriers were unable to compete successfully and went out of business.

A number of other unionized companies are doing very well. The top four general freight firms—all union—are operating with profit margins well above the industry average, as are a number of much smaller union firms.

Question 7. You state that you are aware of the problem of high insurance premiums for the motor carrier industry, and that the Department is studying it. At the same time, we are being told that a substantial number of carriers are on the edge of bankruptcy and other potential new entrants are being deterred from initiating service because of the cost of insurance. Are we waiting too long to act?

Answer. The major difficulties which we see in the insurance area are wholly unrelated to the issue of deregulation. We have received numerous motor carrier complaints about both the lack of liability insurance available to them and significant increases in premium rates when the insurance can be obtained. The motor carrier industry's difficulties stem from the broader problems encountered by the insurance and reinsurance industries.

This insurance "crunch" is not peculiar to the trucking industry. It affects all lines of commercial insurance, including insurance for intercity buses and other vehicles used for business purposes, workmen's compensation insurance, and insurance for doctors, manufacturers, and municipalities.

The root cause of this insurance problem seems to be that, in the early 1980's, motor carriers (and others) benefited from low premium rates charged by highly competitive insurers eager to obtain funds to place in high yielding investments. The high interest rates paid on these investments were subsidizing insurance premiums. The low premium rates the insurers had been charging were insufficient to generate reserve cash needed to cover claims, particularly as awards and liabilities in other areas reached new highs.

The origins of the problem are not simple, and the solutions are not simple either. We believe that solutions should be worked out in the course of normal business transactions between the two industries. We would not favor legislated solutions such as lowering the liability limits set by the Congress in 1980 or providing government assistance to either industry.

Question 8. Access continues to be a major problem for both carriers and shippers. What is DOT doing to ensure that the productivity gains offered the trucking industry in 1982 are not lost?

Answer. After significant initial controversy and litigation, the access problem seems to be essentially resolved, and we are hearing of very few problems in actual

operations. The States are working cooperatively with the industry to provide additional network miles or access where requested. Most of these additions are being provided under State law and authority, and we have not been involved.

Several States in the East have been slow to work out access problems, primarily because of difficulties in coordination with local jurisdictions, but considerable progress is being made. Overall, we feel that the provisions of the 1982 Act are being effectively implemented. The final rule provides for a system covering 181,000 miles, including 42,000 miles on the Interstate System. Our very close monitoring has turned up no safety problems arising from the introduction of the larger vehicles.

Senator PACKWOOD. Now, if we might move to Mr. Norman Weintraub, the chief economist and director for the department of economics of the International Brotherhood of Teamsters, accompanied by Paul Locigno and Jack Alexander—if he has arrived from Portland.

Mr. Weintraub, go right ahead.

STATEMENT OF NORMAN A. WEINTRAUB, CHIEF ECONOMIST AND DIRECTOR, DEPARTMENT OF ECONOMICS, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, ACCOMPANIED BY PAUL LOCIGNO, DIRECTOR OF GOVERNMENT RELATIONS

Mr. WEINTRAUB. Good morning, Mr. Chairman. Mr. Locigno will start off the testimony.

Mr. LOCIGNO. Good morning, Mr. Chairman, Senator Danforth. On behalf of the International Brotherhood of Teamsters, we sincerely appreciate the opportunity afforded us today to be here and present our views.

I would like permission of the Chair to submit the statement of Mr. Weintraub and our general president, Mr. Presser, for the record.

Senator PACKWOOD. Thank you. Without objection, it will be in the record in full.

Mr. LOCIGNO. Thank you. Unfortunately, Mr. Alexander, president of Teamsters Joint Council 37, Portland, OR, had minor surgery performed. On the recommendation of his doctor, he did not make the trip. And I would like to utilize the majority of our time allotted to Mr. Weintraub and just briefly make a couple of remarks here from the human element standpoint.

Mr. Chairman, as you know, the International Brotherhood of Teamsters is in the people business. Our members did not ask for the 1935 Motor Carrier Act that regulated this industry, but they had to work under it. They didn't ask for the 1980 Motor Carrier Act. The only thing that we are asking for is that these workers be treated fairly and not have to suffer the consequences for Federal legislation that affects them, their families and their futures and their lives.

I agree with Chairman Taylor when he said that the ICC is nothing but a papershuffling agency. However, we respectfully submit that they will not implement the 1980 Motor Carrier Act. And I think they would have plenty to do over there at the ICC if they would uphold the intent of the legislative mandate that was in the 1980 Motor Carrier Act.

I would just like to leave you with this thought, Mr. Chairman. If everyone in this room woke up tomorrow and, because of some Federal intervention, they either lost their job or their employers

asked them to take a 10 to 35 percent pay decrease in their wages, I think a lot of people in this room could not make it and would be upset. And this is the situation that our membership is in.

And we would again ask the Chair if section 35 of the 1980 Motor Carrier Act, which provides for a job referral bank to be instituted by the Department of Labor, could have the proper funding so it could be instituted to at least relieve some of this burden that has been cast upon our membership.

Thank you, Mr. Chairman.

Senator PACKWOOD. Thank you.

Mr. WEINTRAUB. Yes, Senator Packwood. I am Norman Weintraub, chief economist for the International Brotherhood of Teamsters. I would like to just briefly summarize the prepared statement. I sometimes get a feeling that each year we come up here after the DOT and ICC witnesses, and it is hard to believe we are describing the same industry.

We have had 60 major trucking companies, general freight carriers, terminate operations since July 1, 1980. In fact, Oneida Motor Freight, within the last couple of months, terminated operation. It is hard to blame that on the financial condition of the carrier back in 1978 or 1979 as a reason for terminating operations in 1985.

These 60 carriers employed 77,000 people, about three-quarters of which were Teamsters, about 60,000 in 1978–79. About 20 percent of the capacity of the general freight industry has left the industry since that date. What we have had is new entrants in the truckload sector, small mom and pop operations, somewhere between 15,000 and 18,000. The ICC cannot tell you how many of these new carriers terminated operations, how many people these new carriers employ, how much tonnage they haul, how much mileage they travel. The ICC does not have the figures.

There was a general upturn in the economy, as you all know, in 1983 and part of 1984. That general upturn did not apply to the general freight carriers. In 1984, 20 of the largest 40 Teamsters represented general freight carriers operated at a loss.

In the first quarter of 1985, 18 out of the top 37 union general freight carriers operated at a loss, as well as 3 or 4 of the largest nonunion carriers.

At the same time the economy had a recovery. The Federal Reserve Board Index of Industrial Production has increased. However, tonnage hauled by the regular common carriers of general freight, as reported by the Regular Common Carrier Conference, continues to go down. In the first quarter of 1985, tonnage was down by 16 percent from the first quarter of 1984. Tonnage since 1980 has decreased by 26 percent for the regular route common carriers, your major LTL carriers.

Since 1979, tonnage is down by 41 percent. We have lost about 60,000 people permanently, we believe, from the major carriers that have closed, plus we still have high layoffs in some of the carriers that are still operating.

One of our local unions in North Carolina and another one in South Carolina have attempted and are attempting to track what happened to the employees of these carriers. They are doing something that the Federal Government and the Congress has refused

to do—make a study of exactly what happened to these employees when a major freight carrier shut down.

Spector Redball, the largest shutdown carrier, employed 7,600 people in 1979 and about the same when they closed in 1982. In North Carolina, we have received results back from about 97 surveyed unemployed people. The average age of these employees was 52 in 1982. They had 24 years of service.

Thirty-nine of the 97, or about 40 percent, retired. We will get back to them in a minute. Thirty-nine are employed; 19 are still unemployed. The percentage of unemployment is 32.8 percent—very, very high.

Fifty-four of the 58 people that are still in the labor force, still working or unemployed, stated that their standard of living has been cut from anywhere from $6,000 to $30,000 a year, and the local union says the average cut in income that these people have reported since 1982 is between $10,000 and $25,000 a year.

Of the 39 employed, 18 are still in the trucking industry. The majority had to find work outside the trucking industry, and that is the McDonald's type, minimum wage type, of job that they were able to find. Only 11 of the 39 people are working union in 1985.

Of the 39 retirees, 37 stated that they would have worked longer but that they could not find any other jobs. They had to take the early retirement, and that the average was about 8 years that these people wanted to work longer. Obviously, just because they are in retirement does not mean that they are having a good standard of living. They have had to take early retirement at a reduced rate, and this has had a serious impact on our health and welfare and pension funds because the pension funds, in most instances, pay the full health and welfare for these people and there is simply no one else replacing them to contribute.

The results in South Carolina, local 28, are not quite as bad. There were other jobs. But only 15 of 92 people in South Carolina that were laid off from Spector Redball were able to work union in that area. The rest had to go out, and the layoff rate was about 10 percent. Fifty-two retired, most of them stating that they retired early.

We are going to obtain a final report for these people, and I apologize for not having a preliminary copy. I just received it over the weekend, Mr. Chairman. I would like to submit it for the record, if I may.

We, on behalf of the Teamsters, have offered to cooperate each year with any agency of the Federal Government that would run a survey to find out what happened to the people that were laid off. To date, all we have had, 3 years ago, was a GAO report which seemed to take more interest in attacking some of the assumptions behind our report, rather than doing any research of their own. We are still ready to cooperate, Mr. Chairman, but we ask that no further deregulation be done until we find out what happened to these people. If the gains of deregulation are as great as the previous witnesses said or as ex-President Carter stated in 1980, they were $8 billion a year, certainly we can afford to do something for these people that have suffered in the wake of this legislation.

Thank you.

Senator PACKWOOD. There is nothing more traumatic than the loss of a job to a man or a woman who has had a job. I don't care what you say about deregulation or the growth of the economy. When you bring it down to one on one and you are out of a job, that for you is a problem. It is more than a problem; it is devastating. I agree with you.

May I ask you a question about the chairman's statistics on employment in the trucking industry, although he was citing the Bureau of Labor Statistics which normally I find reasonably accurate.

This is table 1 in the chairman's statement. In your judgment or knowledge, is it true that employment in the trucking industry has gone from roughly 1.34 million in 1978 to 1.64 million in the second quarter of 1985? I am not talking about union employment because I realize what has happened, as we have gone through deregulation, to union employment.

Has total employment gone up about 300,000 in the trucking industry?

Mr. WEINTRAUB. I don't know, Mr. Chairman. Those figures include parts—the major portion of the trucking industry that was never subject to regulation. That would be the commercial zones, the local cartage. Only a third—I think we had this out with the General Accounting Office. Only a third to 40 percent were ever in the regulated sector, and we never had more that I can find than about 350,000 people in the regulated general freight.

And I think what you have had is that deregulation has meant a shift in work. It has gone to those 15,000 to 17,000 new entrants, independent contractors. It has gone to private carriage. It has gone to other sectors, possibly specialized sectors, moving and storage, doing general freight work. It has left the general freight industry and our members.

And we believe that it doesn't really help these members to know that they have sacrificed, that somebody else off the street has found a job.

Senator PACKWOOD. I agree.

What is the status of your negotiation, if you are at liberty to say, with the American Trucking Association on withdrawal under the multiemployer pension plan situation?

Mr. LOCIGNO. Mr. Chairman, if I may, I would like to briefly comment on that. We have had ongoing discussions with the American Trucking Association and also with other segments of the industry including our own industrial section, that has employers under the Teamsters National Master Freight Agreement. It is not an easy thing, because there is not one voice on this issue. And that includes many of our multiemployer pension funds.

It is a very complex issue, and we are all looking and searching very hard to come up with something that will ensure the future financial stability of the funds and our future retirees and not put an undue burden on the industry.

Sentor PACKWOOD. How can a solution be worked out, because I see equities on both sides of this. I was a labor lawyer for 5 years. I did a little bit of bargaining with the Teamsters, a lot with the building trades, but even then—and this was 20 years ago—we were doing lots of multiemployer pension and health plans.

How can you reach a solution which protects the workers and, at the same time, allows a company to get out of the business if they want—and this may even be a healthy company—but it wants to get out of the business. The children don't want to take it over. The owner has been at it 30 years and wants to sell. How do we accommodate both those interests?

Mr. LOCIGNO. Mr. Chairman, if you have any suggestions along those lines, we would appreciate them because that is the $64,000 question. And today, I think if all the parties are honest, I think all will admit we have not found that ideal solution yet.

Sentor PACKWOOD. Congress has not been very good in easing the pain of dislocated workers that we tried under the Trade Adjustment Assistance Act for those who were displaced by foreign competition. That, frankly, has not worked very well, whether we tried well enough or not. I don't know. It has not worked very well. And clearly, it has not worked in the trucking industry.

Would you agree, however, that the purpose of the trucking industry, as I indicated in my opening statement, is not a public works program, nor is it supposed to be a guarantee of profit for the companies. The purpose of the trucking industry is to make sure that shippers and consumers have an adequate choice at a reasonable price in terms of sending and getting their products.

Mr. WEINTRAUB. Mr. Chairman, there has been no labor protective position of any kind in the Motor Carrier Act. Even if the Labor Department would have done their job of listing vacancies, which were very few—if any—in the unionized sector, there is nothing there.

I believe if the gains were as great from changing a system as the witnesses in 1978 and 1979 said they would be—I mean there were figures up to $15, $20, $30 billion of gains to the economy for changing our system of regulation—that something could have been left over for the workers that were hurt in the process.

Now, I disagree with you on one point, Senator Packwood. The foreign trade, I thought the adjustment system, the problem was that it was working too effectively and was getting too expensive, and had to be cut back in 1981 because too many people were able to show that they were hurt by foreign imports.

Sentor PACKWOOD. It was getting expensive, but it wasn't working to retrain the workers or find them jobs. I don't know whose fault that was. I am not laying any blame, it was expensive, but it wasn't working anyway. In that sense, it was a double negative. We were paying the money out and we were not getting the poor devils other jobs.

Mr. WEINTRAUB. In that I agree. There was very little retraining. In the trucking industry, the problem is the shift of work. I don't think you need the retraining. You need these new entrants to give preferential hiring, like the intent of the airline bill, which has never really been put into effect, to give the old workers first preference for the new jobs.

Sentor PACKWOOD. Senator Danforth.

The CHAIRMAN. Your suggestion to us is that we don't push further on deregulation. Do you have any other suggestions?

Mr. WEINTRAUB. I believe they are in the testimony. We would like to go back, which is absolutely impossible. We are very serious-

ly concerned about the impact on the traveling public on the highways with the insurance and the safety situation, and we would like a complete study to be done on the status of the independent owner/operators who we see every day are having a harder and harder time staying in business. There is a definite safety impact.

We would like those people to have the same rights as over-the-road drivers as well as the rights to unionize and to bargain collectively.

The CHAIRMAN. Do you have any recommendations relating to truck safety? We passed a bill in 1984 dealing with truck safety. Should we be doing more in that area?

Mr. WEINTRAUB. Senator, Mr. Durhan, our safety and health director, has a lot of recommendations.[1] And rather than me doing an inadequate job of presenting his views, I would like to present for the record a statement on truck safety.

The CHAIRMAN. OK.

Mr. LOCIGNO. Senator Danforth, if I may comment for a minute, on General President Presser's testimony, we have included in there an editorial from the New York Times, and I think that says it all. It makes reference to a regional spot check they had in New Jersey and New York, and they found that over half the trucks on the highways were unsafe and had very serious defects.

And again, your legislation with your leadership is on the books. We need your assistance to get the bureaucrats to do something about safety. Also, that same editorial says there is only less than 200 Federal people to enforce these regulations, and no matter how commendable the legislation is that the Congress deemed appropriate to pass, when it gets down into the grass roots in the area where it counts, it is nil.

The CHAIRMAN. Thank you, Mr. Chairman.

Senator PACKWOOD. Gentlemen, thank you. I have no more questions. I appreciate your coming.

[The statement follows:]

STATEMENT OF NORMAN A. WEINTRAUB, CHIEF ECONOMIST AND DIRECTOR, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

I. FINANCIAL CONDITION OF THE I.C.C. REGULATED CLASS I MOTOR CARRIER OF GENERAL FREIGHT (I.B.T. REPRESENTED)

Since the enactment of the Motor Carrier Act of 1980, on July 1, 1980 to August 26, 1985, the I.B.T. has found that sixty Class I or II I.C.C. regulated motor carriers of general freight have terminated general freight operations (see Appendix A).[2] The great majority of these unionized carriers declared bankruptcy and completely terminated all trucking operations. As can be seen in Appendix A a few of the carriers are continuing owner-operator truckload operations.

The 60 carriers of general freight employed 77,169 persons in 1979 and had total operating revenues of $3,523.0 million in 1979. The terminated general freight operations represented 21.2 percent of the total operating revenue of the 728 motor carriers of general freight for whom data was available in the F and O.S. (ATA) Annual Report for 1979.

Despite the exit of approximately 20 percent of the capacity in the general freight motor carrier industry between 1980 and 1985 the financial condition of many of the surviving carriers has not improved and many carriers are in serious financial condition.

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[1] See Motor Carrier Safety Act oversight hearing, October 29, 1985.

[2] The appendices have been retained in the Committee files.

For example, the I.B.T. analysis of the 40 largest motor carriers of general freight under its agreement for calendar year 1984, showed that 20 carriers, exactly half, had operating ratios of 100.0 or higher (had operating losses) for all of 1984. Three of the carriers (Mason-Dixon, LeeWay Motor Freight, and Mercury Express) terminated operations in 1985. In 1983, 9 of these 40 large Class I carriers had operating losses. For the 40 carriers where data is available the average operating ratio increased from 96.5 for calendar year 1983 to 98.2 for calendar year 1984.

Thirty of the forty carriers (75 percent) had higher operating ratios in 1984 than in 1983. Eight of the 9 carriers with operating ratios at 100.0 or higher in 1983 did even worse in 1984. Moreover, an additional 9 carriers, who had operating ratios below 100.0 in 1983, suffered losses when their operating ratios increased to 100.0 or higher in 1984.

Concentration of profits among the top 4 moneymakers increased in 1984. In 1984, the top 4 carriers accounted for 72 percent of the net income after taxes earned by the 22 carriers who reported positive earnings. In 1983, the top four carriers totaled 68 percent of the earnings reported by 30 of the 40 carriers.

The number of money losing carriers increased from 10 in 1983 to 18 in 1984. Losses for 1984 were substantially greater than in 1983.

Conditions did not improve in the First Quarter of 1985. In fact, the First Quarter of 1985 continued a declining trend in operations. Of the 37 motor carriers of general freight under I.B.T. agreement with data available, 15 carriers, or 40 percent of the total, had operating losses for the three months ending March 31, 1985. In addition, other large Class I carriers later reported losses—a grand total of 18 carriers employing over 40,000 persons suffered losses while the economy was doing well.

The 37 carriers for whom data is available had total profits of $6.1 million in the First Quarter of 1985, down 75.3 percent from the $24.7 million earned in ther First Quarter of 1984. Only 17 of the 37 carriers posted a profit after taxes in the first 3 months of 1985, while 20 carriers posted losses. The 3 largest carriers earned 74 percent of the total profits made by the 17 carriers that posted a profit during this time period. While operating revenues for the First Quarter of 1985 for 37 carriers was up 0.7 percent from the First Quarter of 1984 tonnage hauled was down 8.3 percent.

The poor financial performance of the first three months of 1985 was not limited to the I.B.T. represented motor carriers of general freight. During the same time period, the average operating ratio for 12 non-I.B.T. large Class I motor carriers of general freight rose from 95.7 in the First Quarter of 1984 to 97.9 for the First Quarter of 1985. Five (5) of the 12 carriers had operating ratios of 100.0 or higher while 6 of the 12 carriers had losses after taxes for the First Quarter of 1985. Total operating revenues for 12 carriers increased by 7.3 percent while tonnage hauled declined by almost 4 percent between the First Quarter 1984 to the First Quarter of 1985.

Please note that for both Teamster represented and non-I.B.T. (other union or non-union) carriers operating revenues increased but tonnage hauled fell in the three months ended March 31, 1985 when compared to the three months ended March 31, 1984.

Professor Alfred E. Kahn, perhaps the most noted and forceful opponent of regulation, confirmed some of our worst fears about the impact of deregulation when he published the following:

"True, some are carriers-new entrants, especially—and truckers are being driven out of business, others seem to be in danger of following. . . . But that is because competition has become so much more intense."—*Page 3*

"I intend in none of this overly hasty survey to minimize the painfulness of the deregulatory process for the people and companies subject to it."—*Page 4*

"But remember, the extent to which all the parties are having trouble is the extent to which deregulation is working. *Bankruptcy is a sign not that deregulation has been a failure,* but that competition is doing what it is supposed to do."—*Page 4* (Emphasis Supplied)

Kahn, Alfred E. "Macroeconomic Consequences of Sensible Microeconomics Policies". S.G.E., Dallas, Texas, December 28, 1984. First Distinguished Lecture in Government.

If the poor financial results registered in the first three months of 1985 are not soon remedied, Professor Kahn may see many new "successes" as additional carriers are forced into bankruptcy. Despite the low rate of increase of labor costs and voluntary measures, such as wage concessions for Employee Stock Ownership Plans by some of the carriers and their employees, the outlook is dim—particularly if there is any increase in the rate of deregulation.

Following are the operating ratios for the first Quarter of each year, from 1979 to 1985 as published by the Regular Common Carrier Conference. A 96.0 used to be considered average:

MOTOR COMMON CARRIERS OF GENERAL FREIGHT FIRST QUARTER 1979 TO FIRST QUARTER 1985

[Operating rates]

First quarter:	
1979	97.0
1980	97.0
1981	98.5
1982	102.8
1983	98.3
1984	98.5
1985	99.1

II. TONNAGE HAULED BY REGULATED MOTOR CARRIERS OF GENERAL FREIGHT (1980 TO 1985)

The Economic Research Committee of the Regular Common Carrier Conference (RCCC) has surveyed the quarterly operating results of the regulated motor common carriers since 1967. In its news release dated July 8, 1985, the RCCC stated:

"Freight tonnage fell to the lowest level of any First Quarter since the RCCC began its survey in 1967. In fact, the First Quarter 1985 tonnage level of 21.7 million is the lowest for any Quarter since 1967."

The RCCC states: "These findings came from a survey of 142 common carriers of general freight. . . ." The 142 surveyed carriers of general freight included those where the Teamsters represent employees as well as non-union and other union represented carriers.

Between 1980 and 1984, tons hauled by the regulated general freight carriers fell from 136.4 million in calendar year 1980 to 100.8 million in calendar year 1984—a decrease of 26.1 percent. Between calendar year 1979 and calendar year 1984, the drop in tonnage was every more dramatic—a net drop of 40.8 percent.

Between the First Quarter of 1980 and the First Quarter of 1985 tonnage hauled declined by 37.1 percent while tonnage hauled declined by almost 53 percent between the First Quarter of 1979 and the First Quarter of 1985. It is significant to note that tonnage hauled declined by 16 percent between the First Quarter 1984 and the First Quarter 1985.

Decline in tonnage hauled by regulated common carriers of general freight (both union and non-union) is highlighted by comparison with industrial production during the same time period. While tonnage hauled declined by almost 53 percent between the First Quarter of 1979 and the First Quarter of 1985, the Federal Reserve Board Index of Industrial Production increased by 9.2 percent

Moreover, while tonnage hauled declined by 15.8 percent between the First Quarter of 1984 and the First Quarter 1985, the Federal Reserve Board Index of Industrial Production increased by 3.6 percent.

While we know that most of the decline in tonnage has been truckload (TL) or tonnage over 10,000 pounds, the carriers in the RCCC survey do a substantial volume of TL business and the RCCC includes non-I.B.T. represented carriers.

It is clear from the RCCC survey, in our opinion, that the regulated motor common carrier of general freight industry did not share in the general economic recovery of 1983–1984. While the economy recovered from the worst recession of the post World War II period, general freight carriers continued to lose tonnage. With the substantial increases in the GNP and industrial production in 1983 and 1984 (and a somewhat lower rate of growth in early 1985) the regulated general freight trucking industry should have expanded. In fact, the regulated general freight industry carried less tonnage. It follows then that almost 60,000 I.B.T. members who permanently lost their jobs when their trucking employers terminated general freight operations, could not have obtained other equivalent employment in a contracting industry.

Deregulation—(the result of the Motor Carrier Act of 1980)—has shifted tonnage away from Class I and II regulated common carriers of general freight.

While we stated in prior testimony that the high rate of layoffs and unemployment were a result of deregulations and the recession of 1982–1983, we contend that the continued economic distress in the general freight trucking industry is a direct result of deregulation. If deregulation was not a major factor the general trucking industry should have recovered with the rest of the economy in 1984.

III. LAYOFFS AND UNEMPLOYMENTS (1980 TO 1985)

In prior years, the International Brotherhood of Teamsters has reported to both the House and Senate Committees conducting annual oversight hearings on the impact of the Motor Carrier Act of 1980 the results of the annual layoff survey of representative Teamster Local Unions.

On September 14, 1984, we reported to this Committee:

"Our Final Report for April 1984, shows that in the thirty-four Local Unions, 13,237 over-the-road drivers and local cartage workers of the 70,763 road drivers and local cartage worker with seniority rights were on layoff status—a layoff rate of 18.7 percent. The 18.7 percent layoff rate excludes drivers and local cartage workers who lost their jobs when their motor carrier employers terminated operations between July 1, 1980 and April 1, 1983."

and

"From our sample, we are able to estimate statistically, with a 95 percent degree of confidence, that the layoff rate in the regulated general freight trucking industry in April of 1984 was between 25.17 percent and 32.81 percent when we consider laid-off workers from carriers that terminated operations between July 1, 1980 and April 1, 1983. When we exclude laid-off workers from motor carriers that terminated operations prior to the current survey years, (re. prior to April 1, 1983) we find with a 95 percent degree of confidence, that the layoff rate ranged between 15.97 percent and 22.51 percent on April 1, 1984.

Because of the renegotiation of the National Master Freight Agreement and Supplemental Agreements in 1985 and the changes negotiated in the retention of seniority while on layoff clause, it is not now possible to compare layoff data with the prior annual surveys. The prior surveys were conducted in April, 1981 to April, 1984. Therefore no layoff survey was conducted in 1985 by the I.B.T.

However, we are confident that the layoff rate for employees of motor carriers still operating is high and that many employees of motor carriers that terminated operations between July 1, 1980 and August 26, 1985, have not found equivalent employment in the general freight industry:

(1) As shown in this Statement, tonnage of general freight carried (both I.B.T. and other) continued to decline in 1984 and the First Quarter of 1985.

(2) The financial condition of many general freight carriers continues to deteriorate and several additional carriers terminated operations in 1984–1985.

(3) New entrants (some 15,000–18,000) since July 1, 1980 have operated in the truckload market, not less than truckload market. There was only one large new entrant in the L–T–L area and this carrier failed. Truckload carriers require a high proportion of Over-The-Road drivers while our terminated L–T–L carriers, on the average, only employed one Over-The-Road driver for every three employees.

(4) The average age of the National Master Freight union in 1979 was relatively old—over the age of 45—with long years of service.

(5) Comparisons with other industries are not encourageing. In addition, the preliminary report of the fate of steelworkers laid-off from U.S. Steel in 1980 and 1981 conducted by the Hull House Association and Local 65 of the U.S.W. shows the problems faced by laidoff, relatively high paid, unionized workers.

STEELWORKERS FARING POORLY AFTER LAYOFFS, CHICAGO STUDY INDICATES

CHICAGO. (By a BNA Staff Correspondent)—A study of steelworkers laid off by U.S. Steel from its South Works plant here in 1980 and 1981 shows that a high proportion suffered severe financial hardship and that less than a third were reemployed in full-time jobs as of mid-1984.

The Steelworkers Research Project, a joint study by the Hull House Association and Local 65 of the United Steelworkers, will be released in final form in mid-December. A major purpose of the project, apart from documenting the plight of the workers themselves, is to stimulate a national public policy debate on reemployment strategies.

The projects findings and public policy recommendations are based on responses to a questionnaire mailed to all persons considered U.S. Steel employees as of 1981. The draft report findings are based on 238 respondents from a list of inactive (laid-off) workers maintained by U.S. Steel in 1981. It includes individuals who took involuntary early retirement when the plant began to curtail operations in 1981, resulting in major layoffs.

The survey respondents were classified as production workers, apprentices, and journeymen who enjoyed an average hourly wage in 1979 of $11.

As of June 1984, according to the study, unemployment among the laid-off workers was 46 percent. But while only 30 percent of the laid-off white workers were unemployed, 60 percent of blacks and 47 percent of Hispanics were without jobs. In June 1984, only 31 percent of total respondents reported holding full-time jobs. Those who had found some work held a range of occupations, but most often jobs clustered in three groups—craftsmen, laborers, and service workers. Of those workers forced to take early retirement, only 16 percent reported receiving Social Security.

Sharp Declines in Household Income

The effect of the layoffs on household income was dramatic. Median household income for the respondents in 1983 was $10,000–$14,999, compared with a median of $20,000 to $24,000 in 1979. Those earning in the lowest categories in 1979 continued to do so in 1983. The difference between minorities and whites within each occupation level grew significantly as well. For example, in 1979 the percentage of the laid-off white production workers earning 1979 the percentage of the laid-off white production workers earning less than $10,000 annually was 10 percent, while for blacks it was 17 percent and for Hispanics, 21 percent. But by 1983, while 36 percent of white production workers were in the under $10,000 category, 62 percent of blacks and 54 percent of Hispanics were, the study said.

The drop in income caused financial hardships, with 24 percent of respondents forced to move because of reduced income, and an additional 11 percent reporting they had been evicted from homes or apartments. Nineteen percent reported they had been forced to withdraw children from parochial or private schools or college. Twenty-six percent had been forced to sell one or more family cars. Eighty-nine percent of the sample reported some changes in physical and psychological health since being laid off.

"The magnitude of the economic transition that workers have undergone far exceeds what we expected," project director Julie S. Putterman told BNA. "A significant number of steelworker respondents moved from the middle class to below the poverty line between 1979 and 1983." she said.

The Bureau of Labor Statistics finally published the first comprehensive look at displaced workers ever done by a government agency in late 1984. As reported in the *Daily Labor Report* of December 3, 1984 the results are not encouraging.

MOST DISPLACED WORKERS FOUND NEW JOBS, BUT 45 PERCENT WITH LOWER PAY

A majority of some 5.1 million displaced workers identified in a new Labor Department report had found new jobs when they were surveyed last January, but a large proportion—45 percent—were earning less than they had in the jobs they lost during recent recessions. The analysis by the Bureau of Labor Statistics is the first comprehensive look at displaced workers ever done by a government agency.

60 Percent Were Reemployed

BLS analysts found that some 60 percent, or 3.1 million, of the displaced workers identified in the study had found new jobs as of January 1984. About 25 percent (1.3 million) were still looking for work, and the rest (15 percent or 700,000) had dropped out of the labor force.

Of the 3.1 million workers who were in new jobs as of last January, a little more than 2.8 million had previously held full-time wage and salary jobs, BLS said. Of these, nearly 2.3 million were once again working in full-time wage and salary jobs as of January 1984. Surveyors obtained earnings data for about 2 million of these workers for both the old and new jobs.

For about 1.1 million (55 percent) of these 2 million workers, weekly earnings from their new jobs were equal to or higher than the earnings on the jobs they had lost. About 500,000 workers reported their earnings exceeded those in their previous jobs by 20 percent or more.

On the other hand, the study showed that about 900,000 or 45 percent of the 2 million workers questioned about earnings said their current earnings were lower than those on the jobs they had lost, with about 600,000 having taken cuts of 20 percent or more.

"Workers who had been displaced from jobs in durable goods manufacturing industries were somewhat more likely than other workers to be earning less on jobs they held in January 1984 than in those they had lost," BLS said.

Younger Workers Fared Better

BLS analysts also found that younger workers had a better chance of finding new jobs than their older counterparts. "While the overall proportion who were em-

ployed in January 1980 was 60 percent, this varied from 70 percent for those 20 to 24 years of age to 41 percent for those 55 to 64 years old. Those 65 years and over often retire when they lose a job, so the proportion in this age group who were employed in January 1984 was only 21 percent," BLS said.

More than one-fourth of the displaced workers between ages 55 and 64 and as many as two-thirds of those 65 and over were out of the labor force as of January. BLS found that "women in general were somewhat less likely to be reemployed and more likely to have left the labor force."

Of the 5.1 million workers who had lost a job over the last five years, BLS found that about 1.3 million, or one-fourth, were unemployed as of January. The proportion was highest among blacks—41 percent. About 23 percent of whites were still without jobs and about 34 percent of Hispanics.

To date, the only studies of layoffs and length of layoffs conducted in the general freight motor carrier industry are the 1981–1984 Annual Layoff Surveys of the International Brotherhood of Teamsters. The only U.S. Government study outside of statements that our figures and studies were exaggerated was a General Accounting Office reported in 1982 which criticized some of our methodology but attempted no study of its own.

The I.B.T. has offered in each oversight hearing, to cooperate with any government study of layoffs, unemployment and hardships suffered by former employees of the trucking industry.

The workers previously employed in the regulated motor carrier industry and those still employed deserve better. The legislative history of the Motor Carrier Act of 1980 promised Congressional concern, study and possible action. The following are key portions of Report No. 96-1069, House of Representatives, Motor Carrier Act of 1980.

Page 2—Background

"Yet the motor carrier of property industry for all intents and purposes is a healthy industry that has effectively competed with other freight-hauling modes."

Page 3—Overview

"During the hearings, serious concerns were expressed regarding the most feasible methods of coping with unemployment caused by regulatory reform and the devolution of operations—The threat of the elimination of jobs was dealt with by the creation of a list of available job openings to be supplied by regulated carriers to the Department of Labor. In addition, it is the intent of the Committee to conduct appropriate oversight hearings to ascertain the true impact of this bill on industry employment and what action, if appropriate, should be taken."

Congressional Finding (Section 3)—Page 11

"Finally, this section directs the appropriate Congressional authorization committees to hold periodic oversight hearings to assure that the Act is being implemented according to Congressional intent and purpose. *During the first five years after enactment of the Act, the committees are to hold such hearings no less than annually.* The Committee is extremely concerned over the effect that this Act may have on existing motor carriers and on the employees of these motor carriers. Therefore, the Committee intends to conduct an oversight investigation into any employment dislocation in the motor carrier industry that might result from the Act, as well as the Act's effect upon the motor carrier industry itself. It is anticipated that this oversight investigation would be part of the annual oversight effort."

National Transportation Policy—Section 4

"Section 4 amends the National Transportation Policy by adding a new paragraph to section 10101(a) of title 49, United States Code. The new paragraph declares that it is the federal policy with respect to motor carriers of property to promote a competitive and efficient transportation service in order to meet a number of important goals."

"Section 10101(a) of title 49, United States Code, now outlines six general guidelines for the Interstate Commerce Commission to follow in regulating the transportation modes subject to its jurisdiction. Specifically, the Commission is directed to preserve the inherent advantage of each transportation mode, promote safe, adequate, economical, and efficient transportation, encourage sound economic conditions, establish and maintain reasonable rates, coooperate with the states, and *encourage fair wages and working conditions.*"

"Section 4 of the Act adds guidelines for the regulation of motor carriers of property. The guidelines provide that regulation promote competitive and efficient transportation services to meet the needs of shippers, receivers, and consumers, to en-

courage price and service options, to achieve energy and economic efficiency, to provide opportunities for adequate profits and fair wages, to provide and maintain service to small communities and small shippers, to improve a sound, safe and competitive motor carrier system, to promote participation by minorities, and to promote intermodal transportation."

Job Referral—Section 35

"Section 35 directs the secretary of Labor to publish comprehensive lists of jobs available with regulated carriers and to assist persons previously employed by a regulated carrier to find other employment. It is not the intent of Section 35 that any motor carrier be required to hire employees from such list or that motor carriers be required to refrain from immediately filling any openings. Specifically, no motor carrier shall be required to refrain from filling any openings until such openings are published on the list."

"The Committee was also requested to amend the bill to provide labor protection for employees of the trucking industry who might lose their jobs as a result of this legislation. Labor protection provisions have been included in the Airline Deregulation and other Acts of Congress according to dislocated employees first hire rights and assistance payments. The Committee elected not to include such provisions at this time."

"The Committee will conduct oversight investigations into the impact of the legislation on employees in the motor carrier industry.

If these investigations reveal substantial hardship occurs as a result of this legislation to those now employed in the trucking industry, the Committee will consider appropriate legislation to address the problem. In its monitoring of job displacement resulting from this Act, it is the sense of the Committee that the Congress be kept abreast of such displacement by receiving from the secretary of Labor on a quarterly basis such information as is necessary for guiding the Congress in future legislative initiatives."

The International Brotherhood of Teamsters requests that this Committee commission an impartial study by experts of the layoff and unemployment records in the I.C.C. regulated motor carrier of general freight industry. Such a study must concern itself with the financial losses suffered, if any, where a laid-off worker did obtain other employment. The study must also pay particular attention to the losses suffered by participants of Health and Welfare and Pensions Funds who were "forced" to accept early retirement and/or lower health care benefits. The impact of layoffs on health care and health care financing and mental health must be closely examined.

If the gains of deregulation ($8 billion as stated by then President Carter on July 1, 1980) are as great as the proponents maintained, and still maintain as does Professor Kahn, surely we can afford an impartial study of the impact of our laid-off American truckdrivers and other workers.

IV. PROPOSAL TO DRASTICALLY CUT FINANCIAL AND OPERATING STATISTICS—CONGRESS SHOULD OPPOSE—MORE DATA AS NEEDED

In the Federal Register of February 21, 1985, the Interstate Commerce Commission in "Notice of Proposed Rulemaking—Docket Number 18904" proposes to emasculate the uniform system of accounts and the quarterly and annual report requirements of Class I and II common and contract carriers of property. Because of the strong opposition the comment date was extended from April 8, 1985 to October 8, 1985.

The I.B.T. strongly objects to the Proposed Rulemaking and requests that the Committee direct the I.C.C. to drop its proposed action.

In comments received at the I.C.C. the casualty insurance industry vividly explains the costs and dangers of the proposal to the motoring public. The destruction of the statistical base of financial and operating statistics based on the uniform system of accounts will make studies of the regulated trucking industry extremely difficult and less reliable.

In fact, the I.C.C. and Department of Transportation should be required by the Congress to expand their statistical services. Data is urgently needed on the following subjects, among others:

(1) Extent, growth and characteristics of private carriers, by type of freight hauled.

(2) Number, tonnage hauled, mileage, type of freight hauled by Class III carriers—including new entrants and exit data.

(3) Data on intercorporate hauling—extent.

(4) Better data on general freight handled by specialized regulated carriers.

The unwise decision of the I.C.C. to delete its reporting requirements for Class III carriers several years ago has made it impossible to determine the extent of the impact of the new entrants. There is also a great need for the study of owner-operators and the relationship between owner-operators and the Class III new entrants.

We feel that we have shown the decline of tonnage hauled in the I.C.C. regulated motor carrier of general freight industry. However, with the lack of data we are unable to determine exactly what other sectors and industries have been the beneficiaries.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question 1. In your view, what action could Congress take to help organized labor without discouraging competitive activities in the trucking industry?

Answer. The International Brotherhood of Teamsters as the dominant collective bargain representative for employees working in the regulated trucking industry, has not asked the Congress to help or assist the union in adjusting to deregulation. Rather the IBT has consistently requested that the Congress provide assistance to those workers who lost their job and income because of the enactment of the Motor Carrier Act of 1980 and its implementation by the Interstate Commerce Commission.

The specific IBT recommendations for labor protective provisions are provided in our answer to the second question in your letter dated October 28, 1985.

In addition, the Congress should amend the Motor Carrier Act of 1980 to provide that all owner-operators working on lease to regulated motor carriers must be legally considered "employees" and entitled to collective bargaining. Because the National Labor Relations Board and the Federal Courts have declared owner-operators in many situations to be "independent contractors" and not "employees", most owner-operators working in the regulated motor carrier industry have been denied the opportunity to participate in the collective bargaining process.

The denial of the fundamental rights of owner-operators working on lease to regulated motor carriers to form unions and bargain collectively has directly contributed to the instability and chaos in the industry. In addition, the financial plight of the owner-operators definitely impacted on safety.

Unless the Congress extends the right of collective bargaining to so-called independent owner-operators, these drivers will continue to provide unfair competition. In order to pay the monthly interest charges on their equipment and other necessary expenses the so-called independent owner-operators will continue to offer their services at unreasonably low rates. Lacking bargaining power the independent owner-operators in desperate financial straits will drive at higher speeds and work longer hours than the law allows with adverse impact on safety on the highways.

In our opinion, treating owner-operators as employees rather than as independent contractors will lower the amount of unfair competition and drastically improve safety on the highways.

Question 2. To what extent do you believe the economic recession, as opposed to deregulation, was responsible for the problems now being faced by the Teamsters in the trucking industry?

Answer. There is no question that the economic recession of 1981–1982 played a substantial role in causing the financial difficulties suffered by the regulated motor carrier industry. In particular the general freight sector of the regulated motor carrier industry was hard hit by the depression in automobiles and construction—two major customers of the general freight truckers. The economic recession of 1981–1982 was the most severe turnabout in the general level of economic activity since the Great Depression of the 1930's and it would be surprising if it did not play a major role in the distress suffered by many of the motor carriers we represent.

However, while the general level of economic activity and industrial production rebounded significantly in 1983–1984 from the 1982 recession lows the regulated general freight motor carrier did not share in the prosperity enjoyed by most other industries. As our testimony before this Committee shows, the tonnage hauled by the regulated general freight motor carrier industry (both union and non-union) continued to decline in 1984 and the first quarter of 1985. Tonnage in 1985 is down about 40% from 1979 levels. About ⅓ of the largest Class I motor carriers of general freight are in poor financial condition in mid 1985 and are in danger of going out-of-business.

The loss of the truck-load business to the new entrants; predatory price cutting, and unfair competition from so-called independent owner-operators continued in 1984–1985. While some of the blame for the economic distress in trucking in 1981–1982 can be attributed to economic recession, the continuing financial difficulties of many of the regulated general freight motor carriers in 1983–1985, in our opinion must be attributed to deregulation and not to the recession of 1982.

Senator PACKWOOD. Next, let's have a panel of Mr. Hitchcock, Mr. Anderson, Mr. Leach, Mr. Copper, Mr. Zegar, and Mr. Green. [Pause.]

Senator PACKWOOD. Gentlemen, excuse me. We were discussing another topic.

Let's start with Mr. Hitchcock. Mr. Hitchcock, I wonder if I might paraphrase this correctly. You are one of the few witnesses here who genuinely represents consumers. I am not talking about shippers relating to shippers or shippers relating to their customers. You are here representing basically consumers; is that right?

STATEMENTS OF CORNISH F. HITCHCOCK, PUBLIC CITIZEN; CARL ANDERSON, CHAIRMAN, HIGHWAY TRANSPORTATION COMMITTEE, NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE; JAMES K. LEACH, J.C. PENNEY CO., INC., REPRESENTING THE AMERICAN RETAIL FEDERATION, ACCOMPANIED BY DAN SWEENEY, GENERAL COUNSEL; WALTER L. COPPER, JR., PRESIDENT, DRUG AND TOILET PREPARATION TRAFFIC CONFERENCE, AND MEMBER, NATIONAL SMALL SHIPMENTS TRAFFIC CONFERENCE, ACCOMPANIED BY DAN SWEENEY, GENERAL COUNSEL; DENIS R. ZEGAR, VICE PRESIDENT FOR GOVERNMENT SERVICES, NATIONAL-AMERICAN WHOLESALE GROCERS ASSOCIATION; AND GEORGE R. GREEN, VICE PRESIDENT AND ASSISTANT GENERAL COUNSEL, FOOD MARKETING INSTITUTE

Mr. HITCHCOCK. That is right, Mr. Chairman. Our membership is made up of over 50,000 consumers from across the country who are interested in a variety of consumer issues, and this is one that we have been active in throughout the 1970's, including the debate over the 1980 act.

Senator PACKWOOD. The reason I emphasize that, is that it is all fine if all the shippers were happy, but if the downside of that was all the consumers were having their prices raised dramatically, that would not be good trucking deregulation.

Mr. HITCHCOCK. Most of the comments that we are getting deal with household goods, where there are still some problems, and there is concern about the safety aspects which you have touched on with some of the earlier witnesses.

Those are where the concerns are these days in this area.

Senator PACKWOOD. As I have indicated earlier, I have had the chance to read all of your statements over the weekend. If you will each hold yourself to the 5 minute oral presentation, your statements will be in the record in full, and we have quite a number of questions.

Mr. Hitchcock, go ahead.

Mr. HITCHCOCK. Thank you, Mr. Chairman. Since my testimony may be cumulative of some of the points you and some of the other witnesses made before, I will try to summarize fairly quickly.

As I indicated, we did support the 1980 Motor Carrier Act. It was intended to achieve a number of important goals such as more competition, an end to certain forms of price fixing, greater fuel savings and efficiencies, the elimination of wasteful economic regulation that protects the industry but does not do much for the public, and the maintenance of fairly strong truck safety requirements which do protect the public. The available evidence suggests that the act has worked well in achieving those goals.

Congress has not seen fit to tinker with the major provisions of the act, and with a couple of minor exceptions the courts have not overturned any major aspects of the agency's implementation, which suggests that the act is working pretty much the way that the Congress intended.

There is one criticism of the 1980 act, which is that it did not go far enough. There is some form of price fixing that still continues that small shippers complain about; entry, regulation has burdens on small carriers and those that are trying to get into the industry, the monumental paper-shuffling that Chairman Taylor spoke about before. You still have some of those arcane regulations on the books about how you need a license to transport race horses, but not horses for recreational riding, and a few other favorites. I am not sure the last one makes much difference to the horse.

But we think the time is now ripe, having gone through the period of 5 years, to consider further reform, and that gets to a question that Senator Danforth brought up earlier about a breathing spell. I think you were right, Senator Danforth, there was about a year of transition after the act was passed, as the industry got used to the way the new regime would operate, and then we went right into a recession which lasted about another 12 to 15 months. But for the last 3 years there has been economic recovery, there has been some degree of stability in the fuel situation.

I think the industry has already been in something of a breathing spell, and I am not really sure what would be expected if there were a further period of go-slow. Congress rewrote the law in 1980. The law has been unchanged since then. I think it is appropriate to consider what other changes would be appropriate now.

As we see it, there are several key elements that Congress should consider for further reform. One would be ending all remaining antitrust immunity for collective ratemaking. A second would be an end to entry regulation for carriers that can meet tough Federal safety standards. The third would be maintaining those consumer protections for household goods movers and other antitrust-type rules the way the Congress did last year in the CAB Sunset Act. And the fourth element would be to look at what other ICC rules should continue in light of those other changes.

There are other issues which I have not touched on in the prepared statement, dealing with safety and the insurance aspects of it. Those continue to remain important. When Congress deregulated the airlines, it did not deregulate air safety. That type of regulation is important in the trucking area as well.

These various elements were included in S. 2038, Senator Packwood's bill in the last Congress. One aspect which has come up since 1980 is the question of preemption and State regulation.

This is an issue that we have not really focused on, but others in the industry have. My observation would be that Congress already has adopted some form of preemption in the other areas that it has passed deregulation legislation; I am not sure why it is that Congress has not taken the same approach in the motor carrier area. It is an issue that ought to be addressed.

I remember when this committee was debating airlines in 1978, everyone said, "Well, of course we are going to preempt. We are not going to have 50 civil aeronautics authorities running around," and that was not controversial at the time, but things have changed since then. And given the other reforms in bus and rail, it ought to be looked at.

There is an interesting approach to these items in H.R. 3222 which has already been introduced on the House side by Congressman Moody, Congressman DeLay, and five other Representatives. It is a bipartisan effort to try to remove some of the remaining Federal restrictions and at the same time do away with some of the State rules that limit the ability of regional and national carriers to operate effectively at their most productive levels.

It deals with a number of other aspects, like uniform taxes and other forms of uniform regulation, and we think that would deserve consideration by this committee as well.

Again, I appreciate the opportunity to be here and would be happy to answer your questions.

[The statement follows:]

STATEMENT OF CORNISH F. HITCHCOCK, ATTORNEY, PUBLIC CITIZEN

Mr. Chairman, members of the subcommittee, on behalf of Public Citizen, I appreciate the invitation to testify at today's ovesight hearing regarding the Motor Carrier Act of 1980.

Public Citizen is a non-profit consumer organization with over 50,000 members from across the country. We have long been interested in the Interstate Commerce Commission's regulation of the trucking industry, both as to general freight carriers, as well as household goods moves, from whom consumers purchase trucking services directly. The trucking industry plays an important role in the American economy, and the way it is regulated is important to consumers. As our friends in the industry remind us: "If you bought it, a truck brought it." One of the initial Nader studies, "The Interstate Commerce Omission," published in 1970, focused on shortcomings in ICC regulation, and Public Citizen was active in supporting enactment of the 1980 law.

The Motor Carrier Act of 1980 was designed to achieve a number of important goals which we have long supported: greater price and service competition; an end to certain forms of pricefixing; greater fuel savings; the elimination of wasteful economic regulations that protect the industry, but not consumers; and the maintenance of stringent truck safety requirements, which do serve to protect the public. The available evidence suggests that the Act has worked well in achieving these goals.

Today's hearings marks the end of an era. When Congress passed the 1980 Act, it mandated annual oversight hearings, in order to assess how the Act is working. Since that time, the industry has often complained about how the ICC has allegedly thwarted Congressional intention in various decisions. In light of those complaints, I think it is approprtiate to note that Congress has not seen fit to alter the basic provisions of the statute. Nor, despite numerous lawsuits, have the federal courts held that the ICC has made any serious legal errors in administering the Act. In short, it appears that the Act has worked pretty much as Congress intended, and the focus must be on where we go from here.

If there was any one shortcoming with the 1980 Act, it is that Congress did not go far enough. For example, Congress barred collective ratemaking for single-line rates, which was a significant step, but it failed to do anything about general rate increases, which have continued to climb since 1980, prompting complaints from

small shippers. Similarly, entry into the industry and onto particular routes is fairly easy, but firms must still go through what ICC Chairman Taylor has described as a monumental paper shuffling exercise with every new application. This does not affect the large companies, but it hurts small truckers and firms trying to get started in the business.

Finally, despite arguments that full deregulation is already in place, we note that some archaic regulations have lingered on for reasons that are hard to discern. For example, why should a trucker need a license to haul butter, but not buttermilk? To haul frozen beef dinners, but not frozen chicken dinners? To haul chocolate-coated raisins, but not honey-covered raisins? To transport racehorses, but not horses used for recreational riding?

In short, while the 1980 Act was successful as far as it went, it did not go far enough, and it is appropriate for Congress to complete the task it began in 1980. There are several key elements of that package:

(1) and end to all remaining antitrust immunity for collective ratemaking, as well as ICC rate regulation;

(2) an end to entry regulation for all carriers which can meet tough federal safety standards;

(3) maintenance of consumer protection regulations for household goods movers and other antitrust-type regulations and enforcement authority, which Congress might consider transferring to the Department of Transportation or the Federal Trade Commission, which were the options considered last year in the CAB Sunset Act of 1984; and

(4) an examination of the continued vitality of other ICC regulations, which might not make sense in light of the other changes being proposed.

These elements, in various forms, were contained in S. 2038, which you introduced in the last Congress, Mr. Chairman, and we would urge you to consider the re-introduction of similar legislation soon. I note that other supporters of further reform urge the Congress to abolish or phase out state regulation of intrastate routes and rates. Congress did include a total pre-emption provision when it deregulated the airlines in 1978, and it also provided for limited pre-emption in the rail and bus laws enacted in 1980 and 1982, respectively. For some reason, Congress has not altered state economic regulation of motor carriers, and this anomaly should be examined further.

An interesting approach to these issues which also merits your attention is contained in H.R. 3222, a bi-partisan reform bill which was recently introduced by Representatives Moody and DeLay and five other co-sponsors. The bill accomplishes the essential route and rate reforms I mentioned a moment ago. It also tackles the pre-emption issue by creating a new class of "national carriers," which would not be subject to state economic regulation. At the same time, it retains state control over truckers which operate solely in local markets in the state. This approach has the virtue of letting the states regulate local commerce, while providing a uniform system of federal regulation—or non-regulation, as the case may be—for companies that operate throughout a region or throughout the coutnry.

Thank you again for this opportunity to be here this morning. I will be happy to respond to your questions.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. One of the goals of the Motor Carrier Act of 1980 was to keep truck rates at levels lower than those which would have applied if stricter Interestate Commerce Commission regulation had been retained. In your view, has this goal been achieved?

Answer. Yes. The abolition of antitrust immunity for certain forms of collective pricefixing, as well as eased entry restrictions, have fostered a more competitive operating environment in which rates are lower than they would have been had the 1980 Act never been passed. General rate increases have boosted rates significantly for some shippers, and small shippers in particular have complained about this fact. The reason for this disparity is that Congress decided to retain antitrust immunity for this type of pricefixing; had Congress lifted this immunity as well, the benefits of price competition and lower rates would have been spread even further.

Question. With respect to general freight trucking companies, do you see the need for any continued federal regulation, other than safety and insurance requirements?

Answer. Public Citizen supports strong federal regulation of truck safety and insurance requirements, as well as various forms of antitrust "regulation." We also support continuation of consumer protection regulations in the area of household goods moving, as these rules police the marketplace and help protect against unfair and deceptive practices. Public Citizen has not had occasion to date to review the need, if any, for continued federal involvement in such areas as carrier/shipper liability issues, the Carmack Amendment, etc. These and other issues deserve further study by the Committee.

Senator PACKWOOD. I think we will take the entire panel first.

I think the reason for the continued State regulation, is that it has just been traditional, it has been history, sort of what is good. There had not been extensive airline fare regulation, other regulation, even prior to the Airline Deregulation Act, but I agree with you; we are coming to a place where, apart from perhaps the right to tax, and even though there ought to be some limitation so that they don't use it as an excuse, there ought to be a fair amount of Federal preemption in terms of interstate commerce.

Mr. HITCHCOCK. To the extent that the trucking industry is an important part of the national infrastructure, I think that is an argument in favor of some degree of uniformity, at least, as the Moody-DeLay bill indicates, for those carriers that are operating throughout a region and throughout a country, and there are things about preemption that would benefit the trucking industry as well. It affects not just your intrastate routes and rates, but State taxes and driver registration and all.

Senator PACKWOOD. Mr. Anderson.

Mr. ANDERSON. Thank you, Mr. Chairman. My name is Carl Anderson. I am director of physical distribution services for Whirlpool Corp., Benton Harbor, MI, and chairman of the Highway Transportation Committee of the National Industrial Transportation League.

Accompanying me today is James Leach, who is manager of transportation for J.C. Penney Co., Inc. of New York City, and chairman of the league's small shipments transportation committee. After we complete the league's testimony, Mr. Leach will present the views of the American Retail Federation.

The league is pleased to be here this morning at the last oversight hearing on the 1980 Motor Carrier Act. We are grateful for the opportunity to present our members' views, not only on the act's continuing effects on the transportation marketplace, but also on what future steps should be taken to assure that our mutual goal of a market disciplined trucking industry is realized.

Senator PACKWOOD. Could I just interrupt? I just want to make sure that one thing is on the record. Your statement indicates that your members are responsible for the routing of about 80 percent of the country's commercial freight.

Mr. ANDERSON. That is correct, Mr. Chairman.

Senator PACKWOOD. When you speak, you speak for an organization that is up to its neck in trucking, one way or the other, and is very well familiar with and speaks with a broad voice.

Mr. ANDERSON. Thank you, Mr. Chairman. You have stated the case very succinctly.

As we have testified throughout this oversight period, league members generally are well satisfied with the current regulatory

environment and the flexibility it affords to the interstate trucking industry in meeting shippers' changing market needs.

Our members' assessment recognizes that deregulation continues to present its own set of challenges for transportation professionals. In reviewing the events of the past year, the league would like to highlight several of them because of the impact that they will have on the continued success of that act.

These matters, which are explained in our written statement, include the status of rates negotiated between shippers and carriers which have not been put into tariff format, the growing problems created by the act's insurance requirements, and the expanding dichotomy between interstate and intrastate regulatory practices.

In looking to the future, our members believe it is now time to complete the transition to a truly market-disciplined trucking industry. They think that the two most important steps in this transition involve the standards for operating rights authority and the elimination of the industry's antitrust immunity for collective ratemaking.

With respect to operating rights, the league would urge that a single "fit, willing, and able" standard be used in determining whether to grant an operating rights application. This standard's safety and financial fitness requirement should act as an effective and easily administered test to assure that applicants have the necessary qualifications to maintain the industry high level of professional integrity.

With respect to antitrust immunity, the league believes that today's freer regulatory environment and the Interstate Commerce Commission's failure to use its rate review powers to protect against abuses of collective ratemaking require the abolition of this immunity for the trucking industry. The disparities between the marketplace and collectively set rates are well-documented in our oversight testimony last year.

Our members would also note that another important step in realizing the productivity gains envisioned in the 1980 act, the Surface Transportation Assistance Act, and those contemplated in any further deregulation measures is assuring the free flow of commerce throughout the Nation. To this end, we would urge Congress to seriously consider efforts permitting greater access to and from the Interstate Highway System.

In evaluating what other steps should be taken to achieve our common goal, league members currently are studying a variety of issues, including elimination of tariff filing, the need to insulate interstate carriers from burdensome State rules and regulations, the treatment of residual regulatory functions, and the creation of a motor carrier administration within the Department of Transportation.

One of the most critical foundations for success of further deregulation of the motor carrier industry is ensuring that the marketplace, not State governments, becomes the regulator of trucking services offered to the shipping public. The league would strongly urge that some mechanism be provided which makes intrastate truck transportation more compatible with interstate practices.

The league's committees are reviewing various proposals affecting motor carriers, including H.R. 3222, National Motor Carrier

Productivity and Safety Improvement Act of 1985. We would note that some of our members independently have expressed their support for this measure. We look forward to sharing the results of our committee's efforts with you as soon as they become available.

In conclusion, the league generally is well pleased with the marketplace changes that have resulted from the 1980 act. We believe that Congress should now complete the process started by this landmark legislation, and deregulate the trucking industry. In doing so, particular attention should be paid to the further reform of entry requirements, the abolition of antitrust immunity for collective ratemaking, and the clear delineation of what role, if any, states may play in this new regulatory environment.

We thank you for this opportunity to present the views of the shipping community, and offer our continuing cooperation to you and your staff in realizing our common goal of an efficient and innovative trucking industry.

We would be happy to answer any questions you may have.

[The statement follows:]

STATEMENT ON BEHALF OF THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

Chairman Packwood, Members of the Subcommittee: My name is Carl Anderson. I am director of physical distribution services for Whirlpool Corporation, Benton Harbor, Michigan, and chairman of the League's Highway Transportation Committee of The National Industrial Transportation League. Accompanying me today is James Leach who is manager of transportation for J.C. Penny Company, Inc., New York City, and chairman of the League's Small Shipments Transportation Committee. After the completion of the League's testimony, he will present the views of the American Retail Federation.

The League is a voluntary organization of shippers, shippers' associations, boards of trade, chambers of commerce, and other entities concerned with the purchasing of transportation services. It is the only nationwide organization representing shippers of all sizes and commodities using all modes of transportation to move their goods in interstate and international commerce. Its members, directly or indirectly, are responsible for the routing of about 80% of the country's commercial freight.

The League is pleased to be here this morning at the last oversight hearing on the 1980 Motor Carrier Act. We are grateful for the opportunity to present our members' views not only on the Act's continuing effects on the transportation marketplace, but also on what future steps should be taken to assure that our mutual goal of a market-disciplined trucking industry is realized.

As we have testified throughout this oversight period, League members generally are well satisfied with the current regulatory environment and the flexibility it affords the interstate trucking industry in meeting shippers' changing market needs. They believe that this flexibility enabled shippers and carriers to better weather the economic trends of the past five years. They agree with the conclusion of the 1984 Booz, Allen & Hamilton study commissioned by the trucking industry which found that today, it is the quality of management and the corporate strategy chosen, not the Motor Carrier Act, which determines whether a carrier is a winner or a loser.

Our members' assessment recognizes that deregulation continues to present its own set of challenges for transportation professionals. In reviewing the events of the past year, the League would like to highlight several of them because of the impact they will have on the continued success of the Act. They includes: the status of rates negotiated between shippers and carriers which have not been put in tariff format; the growing problems created by the Act's insurance requirements; and, the expanding dichotomy between interstate and intrastate regulatory practices.

Additionally, we believe that further legislative changes are needed to encourage a greater play of market forces within the trucking industry. These changes includes easing entry requirements, abolishing antitrust immunity for collective ratemaking, and realizing the productivity benefits envisioned by Congress in the Surface Transportation Assistance Act.

With respect to the rates issue, the League would note that it has become a practice of some common carriers to confirm rate and service arrangements with their shippers through letters or other non-tariff formats. However, these carriers failed

to file the necessary tariffs with the Interstate Commerce Commission. Over the past year, an increasing number of shippers have been told that they owe substantial sums of money to these carriers because an audit of the freight bill shows that they did not pay the applicable tariff rate. The auditors or collection companies are refusing to accept correspondence or other documentation from the shipper which confirms the carrier's acceptance of the rate originally paid.

to help resolve this controversy so that the intent of the 1980 law is preserved, the League has asked the Interstate Commerce Commission to rule that these so-called "letter rates" are the lawful price for the service at issue. Although we filed our request in February and followed up on it in early August, the agency has yet to act on this important policy question. We would urge the subcommittee to communicate its views to the Commission, and to recommend expedited action on Ex Parte No. MC-177, "Petition for Rulemaking—Negotiated Common Carrier Rates." For your information, copies of our petitions are attached to this testimony.

The insurance crisis affecting so many of the professions now has spread to the trucking industry. This year, carriers are faced with insurance rate increases in excess of 300%. A major factor is the general problem of providing adequate reserves for business liability insurance. An equally important factor is the Act's requirement that carriers of non-hazardous commodities maintain $1 million of liability coverage, and hazardous cargo carriers maintain $5 million of this insurance. Although a phase-in period was provided, it has expired. This situation is complicated by the fact that many of the traditional insurers are choosing not to provide this level of coverage, while those who do so charge substantially higher rates to the trucking industry and, ultimately, the shippers and consumers.

What was originally meant to be a safety feature of the Act is now threatening the law's entry goals. This is occurring because many of the middle and small sized entrepreneurs are finding that the lump sum payments required by the insurance industry are beyond their cash reserves. It also is acting as a deterrent to new entrants who lack both the substantial cash and demonstrated safety record now being required.

As you no doubt will hear from the American Trucking Associations, the for-hire industry has proposed one solution to the problem—an automatic across-the-board surcharge. While the League still has this matter under review, we are not convinced at this time that an approach which ignores the insurance needs and safety performance of each carrier by applying industry-wide surcharges bests serves the public interest. We would urge the subcommittee to carefully study the relationship between insurance requirements and freedom of entry, and consider whether these mandated amounts need to be revised.

Another barrier to an efficient, innovative trucking industry is the ever-widening conflict between interstate and intrastate operating requirements. As the marketplace continues to streamline interstate operations, these efficiencies often are eroded or lost to the rigid regulatory environment governing intrastate shipments.

To illustrate, although United Parcel Service is an interstate carrier and a major transporter of small shipments, it is not permitted to pick up and deliver packages within the state to Texas. UPS is not the only carrier stymied by Texas's intrastate operating requirements. Many businesses are forced to locate their distribution facilities outside the state so that their shipments are governed by the markedly more flexible interstate operating requirements.

Texas is not an isolated situation. Shippers often are forced to segregate their interstate and intrastate cargos and to use different carriers to transport them. This not only increases the costs of delivered goods, it also dissipates carrier productivity and profits. Participating in intrastate transportation is a costly proposition for interstate carriers. In addition to meeting federal requirements, these carriers must contend with an often conflicting patchwork of state regulations for securing operating rights, tariff filing, and a host of administrative paperwork and other reporting requirements. If the trucking industry is to realize the productivity benefits envisioned by Congress, this disparity in regulatory requirements must be resolved.

In looking to the future, the League would note that the Congressional compromise forged in 1980 recognized that further changes to the federal regulatory structure would be needed based upon the experiences gained through allowing a greater play of market forces. Based upon this experience, our members believe it is now time to complete the transition to a truly market-disciplined trucking industry.

Our members believe that the two most important steps in this transition involve the standards for operating rights authority and the elimination of the industry's antitrust immunity for collective ratemaking. These reforms will make the largest strides in assuring that the competitive objectives we share become a reality.

With respect to operating rights, the League would urge that a single "fit, willing, and able" standard be used in determining whether to grant an operating rights application. This standard's safety and financial fitness requirements should act as an effective and easily administered test to assure that applicants have the necessary qualifications to maintain the industry's high level of professional integrity.

With respect to antitrust immunity, the League believes that today's freer regulatory environment and the Interstate Commerce Commission's failure to use its rate review powers to protect against abuses of collective ratemaking require the abolition of this immunity for the trucking industry. The disparities between marketplace and collectively set rates were well documented in our oversight testimony last year.

In calling for an end to antitrust immunity, the League would note that its request pertains to the setting of specific rates and/or rate levels. However, there are related private sector activities where shipper/carrier cooperation contributes to the industry's overall effectiveness. These activities include classification, packaging rules, and other types of standard setting such as electronic data interchange, and claims and liability procedures for loss and damage. While we are not certain that these important cooperative endeavors need explicit statutory antitrust immunity, we do believe that any additional deregulation legislation should assure that these activities continue, even if it means affording them some protection from the antitrust laws.

An important step in realizing the productivity gains envisioned in the 1980 Act, the Surface Transportation Assistance Act, and those contemplated in further deregulation measures in assuring the free flow of commerce throughout the nation. To remedy the productivity losses as noted by other witnesses, we would urge Congress to seriously consider efforts permitting greater access to and from the interstate highway system.

In evaluating what other steps should be taken to achieve our common goal, League members currently are studying a variety of issues including elimination of tariff filing, the need to insulate interstate carriers from burdensome state rules and regulations, and treatment of residual regulatory functions.

There is a growing sentiment within the shipping community for the elimination of tariff filing requirements. This sentiment is based, in part, on the successful elimination of this requirement for the contract carrier industry, and on the problems we described earlier which have arisen with the use of "letter rates." Currently, the League believes that tariff or price list information should be made available. However, as we indicated earlier, the League committees are studying the issue.

One of the most critical foundations for success of further deregulation of the motor carrier industry is ensuring that the marketplace, not state government, becomes the regulator of trucking services offered to the shipping public. The states should be prohibited from entering the transitional void which will be created by the removal of federal economic controls over the industry.

The League would strongly urge that some mechanism be provided which makes intrastate truck transportation substantially compatible with interstate practices. There are several ways to accomplish this goal—for example, interstate carriers could be exempted from state regulatory requirements. This would not affect the states' activities with motor carriers which operate exclusively within their borders.

Already mired in the morass of conflicting state taxation and registration requirements for interstate operations, and their often byzantine requirements for intrastate operations, shippers believe that, unless Congress acts decisively on this issue, a third regulatory structure will be created. It is imperative that any legislation completing deregulation of the trucking industry ensure that the marketplace assumes its rightful role as the regulator of these vital transportation services.

As we have learned from other deregulation efforts, there will be certain residual regulatory functions which will remain. League members currently are reviewing the possible options for assuring the most effective administration of these responsibilities. They also are reviewing the creation of a Motor Carrier Administration within the Department of Transportation. They believe that the structuring of these responsibilities will be critical to achieving our common goals of improved productivity and safety.

The League's substantive committees are in the process of reviewing various proposals affecting motor carriers including a pending House measure on deregulating the interstate trucking industry. We would note that some of our members already individually have expressed their support for H.R. 3222, National Motor Carrier Productivity and Safety Improvement Act of 1985. We look forward to sharing the results of our committees' review efforts with you as soon as they become available.

In conclusion, the League is generally well pleased with the marketplace changes which have resulted from the 1980 Act. We believe that they have resulted in a more efficient and innovative trucking industry which is better able to meet the motor carrier needs of the nation's commercial needs.

We believe that Congress now should complete the process started by this landmark legislation, and deregulate the trucking industry. In doing so, particular attention should be paid to the further reform of entry requirements, the abolition of antitrust immunity for collective ratemaking, and the clear delineation of what role, if any, states may play in this new regulatory environment.

We thank you for this opportunity to present the views of the shipping community, and offer our continuing cooperation to you and your staff in realizing our common goal of an efficient and innovative trucking industry. We would now be happy to answer any questions you may have.

[The following information was subsequently received for the record:]

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE,
Washington, DC, October 22, 1985.

Hon. BOB PACKWOOD,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science and Transportation, U.S. Senate, SH-428 Hart Office Building, Washington, DC.

DEAR CHAIRMAN PACKWOOD: The League thanks you for your letter of October 8, and looks forward to working with you and your staff on motor carrier regulatory issues.

As requested in that letter, The League would give the following answers to the two questions you pose:

With respect to your first question on the trucking industry's current insurance problems, we believe that the first issue to be resolved is whether the increase in insurance premiums are the result of increased claims during this period or whether they are just another manifestation by many different segments of society.

It would be most helpful if the Interstate Commerce Commission and the Department of Transportation were directed to make inquiries into this issue, and to recommend what remedial actions should be taken. These inquiries should include: (1) what segments of the industry are being the most affected; (2) what factors are being used to justify the increase in premiums; (3) whether vehicle maintenance programs, driver safety training and education programs, and carrier safety supervision and management efforts are improving the industry's safety record; (4) whether changes are needed in the legislatively mandated minimum insurance levels, and whether any changes would materially affect current premium levels; and, (5) for hazardous materials movements, the impact of liability for "environmental restoration."

The League believes that these inquiries would help to clarify the nature and extent of the trucking industry's insurance problem as well as to develop a more thorough understanding of the types of remedies available. We do not believe that the adoption of a general insurance surcharge best serves the public interest since it only mitigates the carriers' cost burdens, and does not solve the underlying problems.

With respect to your second question on assuring that the produtivity reforms promised by the 1982 Surface Transportation Assistance Act becomes a reality, the League believes that there is a great need for Congressional action to assure that all parts of the country are able to share in these productivity benefits.

States have defined "reasonable access" in a variety of ways, some of which are extremely restrictive and ignore the fact that similar equipment, such as buses and moving vans, are routinely operated over the roads at issue.

These artificial barriers to productivity cannot be eliminated without strong leadership from the federal government. At minimum, the Department of Transportation's Federal Highway Administration should be directed to promote use of this equipment wherever it can be safely operated. To achieve this goal, we believe that Congress will need to provide specific instructions to the FWHA.

Ideally, Congress should clearly state that it intends for the maximum safe use of this equipment. Your anticipated trucking deregulation bill offers an excellent opportunity to accomplish this goal when it defines what role, if any, the states shall play in the new market-oriented environment.

Sincerely,

CARL ANDERSON,
Chairman, Highway Transportation Committee.

Senator PACKWOOD. Thank you, sir.

Mr. Leach.

Mr. LEACH. Thank you, Senators. My name is James K. Leach. I am manager of transportation of the J.C. Penney Co., Inc. Today I am representing the American Retail Federation [ARF], an organization comprised of 51 State retail associations, 30 national retail associations, and sustaining corporate retail organizations, which represents a combined retail membership of over 1 million stores or outlets.

The transportation policies of the ARF are formulated by a transportation postal committee and reviewed by members, associations, and corporations prior to their approval at the general membership meetings.

The American Retail Federation was a supporter of the Motor Carrier Act of 1980, favoring the improvement, as well as reduction in the regulation of motor carriers. Although the federation would have preferred more extensive deregulation and endorsed the provisions of the act as a meaningful and beneficial initial step in the removal of regulation, ARF has not been disappointed with the results of the MCA.

The competitive thrust of the act has been helpful. Service and rates are at a satisfactory level. A variety of price/service options have resulted. Progress has indeed been made.

However, the federation believes it is desirable and appropriate to now build on the 1980 deregulatory foundation. Retailers remain concerned with the number of major aspects of the motor carrier regulation. ARF seeks the elimination of antitrust immunity or the collective establishment of general rate increases; the elimination of the paper-shuffling requirements at the Interstate Commerce Commission and various State regulatory agencies which inflict undue paper burdens on small businesses; and the elimination of those portions of State regulations which often require shippers to segregate freight into two categories—interstate and intrastate—and frequently have to call two or more carriers for a pickup.

The federation supports enactment of legislation which would provide the remedies we seek, and accordingly have endorsed H.R. 3222, the National Motor Carrier Productivity and Safety Improvement Act of 1985.

The American Retail Federation's transportation policies call for additional meaningful reform in the motor carrier regulation, an increased reliance upon the disciplines of the marketplace, rather than regulation. We are hopeful such legislation, including provisions for deregulations at the Federal and State levels for national and regional carriers, will be enacted.

The American Retail Federation appreciates the opportunity of presenting its views and comments and urges your favorable consideration of these.

Thank you.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question 1. In your testimony you urge elimination of antitrust immunity for collective ratemaking.

a. Why do you support removal of immunity?

b. In your view, does the collective ratemaking system benefit shippers at all?

Answer. We support elimination of antitrust immunity for collective ratemaking because we believe its primary function is to increase prices, rather than promoting economical transportation and that it acts to discourage competition, contrary to the national transportation po.icy. The nature of retailing is such that such members are predominately less-than-truckload shippers with particular emphasis on the lighter weight shipments. These shipments have been the subject of disproportionate price increases with rates escalating 67-75 percent since 1981, whereas the Consumer Price Index has risen but 22.1%. Significantly, from January 1983 through August 1985, while the CPI rose only 10.6%, collectively established small shipment rates for bureauwide application escalated by 23.6 to 38.5%. Absent antitrust immunity increases of this magnitude could not have been imposed as the marketplace would have been free to exert its proper control thus providing shippers with a variety of price/service options.

Question 2. One of the major concerns expressed by deregulation opponents prior to enactment of the 1980 reform legislation was that service to small communities would suffer as a result of regulatory reform. What is the Federation's experience in this area?

Answer. Our response to this question is that there is a need for standardization such as mileage, density, etc. Where such standardization would not be anticompetitive, the antitrust laws should be amended to allow a federal department which administers the business function, such as the Department of Transportation for transportation matters or the Commerce Department for commercial matters, to call meetings to discuss such standards or classifications and antitrust liability should not apply to businesses cooperating in the Federal Departments attempts to standardize or classify such information.

Standard settings in other industries under government auspices involves a broad array of affected interests. Currently shippers are not the co-equal of carriers in the determination of standards. Hence, it is our view the marginal shipper benefits from collective ratemaking are far outweighed by the disadvantages.

Senator PACKWOOD. Thank you.

Mr. Copper.

Mr. COPPER. Good morning, Senator. My name is Walter Copper and my office is in Philadelphia. I am director of physical distribution services for Vicks Manufacturing Division of Richardson-Vicks. I am appearing as the President of the Drug and Toilet Preparation Traffic Conference and also as a member of the National Small Shipments Traffic Conference.

With me today is Dan Sweeney, as general counsel for both conferences. Both Conferences, since the testimony began on this act in 1978 or 1979, have been active in supporting it.

First, let me comment on the positive aspects of the Motor Carrier Act. The principal purpose of the Motor Carrier Act of 1980 was to enhance competition in the motor carrier industry, and it has succeeded. An important secondary result has been to provide the shipping public with a multitude of new transportation options.

Today, carriers as well as their customers, are enjoying a potpourri of services and choices never fully envisioned by the original framers of the Motor Carrier Act. Removing the shackles of Federal regulation has released the dynamic forces of creativity. As a result, a true renaissance has been delivered to the shipping and receiving public.

Today's renaissance is equipped with a pioneer spirit that will continue to give birth to a proliferation of carrier services, products, and concepts well into the foreseeable future. Carrier managements are flexible, smarter, leaner, and respond more quickly due to less Government regulations and restrictions.

Now a carrier and his customer can research and develop reasonable transportation concepts, agree on the price, publish it in the carrier's tariff, and make it happen almost immediately.

Also, we are witnessing a shift from operations-driven carriers to market-driven carriers. These are the carriers that will survive the 1980's and beyond. The new freedoms of the Motor Carrier Act should be viewed as a positive force to unleash carriers' marketing creativity and genius. Today's carriers make the internationally successful just-in-time manufacturing concept a reality.

Today's healthy carriers are those who have a new vision and clearly defined mission because successful and winning carriers are those who can deliver total transportation service that is characterized as a superior value in the marketplace.

The Motor Carrier Act has allowed new carriers to enter the market, which has helped reduce the ever-escalating freight rates prior to 1980. Both less-than-truckload and truckload rates have shown reductions in the magnitude of increases since deregulation. In fact, between 1983 and 1984, less-than-truckload revenues per ton actually decreased by 3 percent, and in the recent 1984–85 period saw an increase of only 1 percent.

These factors are the positive. Now let's turn to the less positive or negative. Unfortunately, the Interstate Commerce Commission has not given much positive support to the Motor Carrier Act in the area of rate bureau general increases. Since 1980, the rate bureaus have ignored the realities of new carrier marketing environment and have annually published high general increases which the Interstate Commerce Commission allowed in most cases to be effective with no investigation.

Thus, the rate bureaus operate virtually unopposed today, establishing artificial list prices, which carriers then selectively reduce for certain shippers and certain traffic. While the initial reaction to this may be that it is a demonstration of market forces at work, the point at issue is that no shipper, including small shippers and shippers in small communities, should see their rates increase because of collective ratemaking.

Both the Drug Conference and the National Small Shipment Traffic Conference have vigorously petitioned for the elimination of collective ratemaking, and we do so today, especially in respect to shipments under 1,000 pounds.

Also, we continue to ask the Commission to adopt specific standards by which to judge the maximum reasonableness of general freight rate increases. But, to date, the shipping public has no guidelines in this most important area of remaining ICC jurisdictional responsibility, and collective general ratemaking by the rate bureaus continues to flourish unabated.

We look to your committee and finally to Congress to consider further steps, because we consider the Motor Carrier Act of 1980 but a first step toward making the motor carrier marketing environment truly competitive in respect to both rates and service.

To accomplish this final act of carrier freedom, Congress must eliminate the statutory immunity which supports collective ratemaking. This immunity serves no purpose other than to allow rate bureaus to establish artificially high list price rates which discrimi-

nate against small shipments, small shippers and small communities.

Finally, we support and praise Congress' deliberate and prudent approach to steadied and cautious steps toward more regulatory freedom in the motor carrier industry. Therefore, we strongly support Congress' preserving approach to key elements of common law and common sense regulatory structure, such as the bill of lading issuance by carriers, responsibility for loss and damage, safety and insurance considerations.

Both the Drug Conference and National Small Shipments appreciate the opportunity to update you on our views. We continue to offer our assistance in the further work that must be done to accomplish the remaining goals of the Motor Carrier Act of 1980.

[The statement follows:]

STATEMENT ON BEHALF OF DRUG AND TOILET PREPARATION TRAFFIC CONFERENCE AND NATIONAL SMALL SHIPMENTS TRAFFIC CONFERENCE

My name is Walter Copper and my office address is P.O. Box 8155, Philadelphia, PA 19101. I am Director of Physical Distribution Services, Vicks Manufacturing Division, Richardson-Vicks, Inc. I am appearing as the President of the Drug and Toilet Preparation Traffic Conference, Inc. (D&TPTC) and also as a member of the National Small Shipments Traffic Conference, Inc. (NASSTRAC)

Representatives on NASSTRAC and D&TPTC testified at the hearings which led to the passage of the Motor Carrier Act of 1980 (MCA) and at the subsequent oversight hearings concerning the implementation of that Act. On behalf of the more than 300 companies and industry associations belonging to NASSTRAC and D&TPTC, I wish to express appreciation for the opportunity to update the Committee on what has happened during the last year.

The Net Result of the Motor Carrier Act Has Been Positive

The principal thrust of the MCA was to enhance competition in the motor carrier industry and it has succeeded. The regulatory barriers to entry have all but been eliminated and new competitors have succeeded in ameliorating the rapid increase in freight rates seen prior to 1980. A few numbers will serve to establish this fact. Between the first quarter of 1979 and the first quarter of 1980, motor carrier revenues per ton on less-than-truckload shipments increased by 21 percent! This increase was reduced to 13 percent between 1980 and 1981, to 10 percent between 1981 and 1982 and to 8 percent between 1982 and 1983. Between 1983 and 1984, LTL revenues per ton actually decreased by 3 percent and the 1984–1985 period saw an increase of only 1 percent. Similar trends were also seen in the revenues per ton for truckload (TL) shipments.

General Inaction by the Commission on Rate Bureau Increases

Unfortunately, these averages mask other post-Motor Carrier Act facts of life in the motor carrier industry, the intolerable combined impact of collective ratemaking and the unwillingness of the Interstate Commerce Commission to protect shippers from unreasonable rate increases created by the ability of carriers to collectively establish rates. It is to these issues that I now turn.

In testimony before this Committee last year, Richard Velten, then President of D&TPTC and now President of NASSTRAC, presented data establishing that the combined impact of general freight rate increases published by the rate bureaus between January, 1981, and June 1984, was to increase freight rates on Minimum Charge shipments by 55 percent.

Given what I have previously said about the decline in the percentage increase in the revenue per ton by these carriers, the Committee may well wonder why there is such a great disparity between the general rate increases, on the one hand, and actual revenue increases, on the other hand. The long and short of it is that general increases are no longer uniformly retained by the carriers. Once the rate bureaus have succeeded in raising the general rate levels, the carriers then selectively reduce the rates for certain shippers and for certain traffic. While the initial reaction to this may be that it is a demonstration of market forces at work, the point at issue is that no shipper, including small shippers and shippers in small communi-

ties, should see its rates increase, not because of market forces, but because of the collective actions of carriers in rate bureaus.

By contrast, West Virginia illustrates the impact of collective ratemaking on small shippers and shippers in small communities. Approximately two years ago the West Virginia Public Service Commission called a halt to collective general increases. Since that time, the West Virginia carrier members of the Middle Atlantic Conference have not published any increases in their intrastate rates because of competitive circumstances. In contrast, the MAC carriers have published interstate general increases of 6.8 percent in just the first eight months of 1985. The conclusion is clear. With collective ratemaking, rates are increased. Without collective ratemaking, rates remain relatively stable.

What has the ICC been doing about rate bureaus' general increases? In a word, nothing. Last year, the Commission denied the petition filed by these Conferences to eliminate collective ratemaking on small shipments. And it continues to refuse to adopt any standards to judge the maximum reasonableness of general freight rate increases. Over two years ago, the ICC terminated its rulemaking proceeding to establish standards for general increases, Ex Parte No. MC-128, and, at the same time it discontinued every general increase investigation on its docket. Over one year ago, the United States Court of Appeals for the District of Columbia Circuit ordered the Commission to provide an explanation of its rationale for discontinuing those general increase investigation cases or to reopen them (No. 83-1884, *NASSTRAC and D&TPTC* v. *ICC* (mandate entered June 8, 1984)). The Commission has yet to reach the further decision required by the Court. The Chief Deputy Clerk of the D.C. Circuit has repeatedly written to the Commission to seek some explanation for its inaction.

To its credit, the Commission has initiated an investigation into the reasonableness of a general increase filed by the New England Motor Rate Bureau earlier this year. Enigmatically, it has refused either to suspend or investigate general increases subsequently filed after the *NEMRB* case, although data filed with those increases showed even greater profitability for the carriers than the rate increases involved in the *NEMRB* case. The point here is fundamental. Unless the Commission comes out with a statement of its standards for limiting maximum reasonable increases, the rate bureaus and the shippers do not have any guidelines in this, the most important area of jurisdictional responsibility remaining with the Commission.

On the other hand, the Conferences commend the Commission for its consistent action in suspending collectively proposed single-line rates. The Motor Carrier Act of 1980 amended Section 10706 of Title 49 to prevent carriers from collectively discussing or voting on single-line rates after July 1, 1984. Old habits die hard and, notwithstanding this prohibition, motor carrier rate bureaus in some instances have continued to file collectively adopted single-line rates or charges with the Commission. The Commission has rejected or suspended every one of these rates to which its attention has been brought by our Conferences. In doing so, the Commission has rejected all efforts by the rate bureaus to redefine "single-line rates" in a way that would make the statutory prohibition meaningless. Similarly, the Commission has refused to expand the "change in rules" exception to the prohibition in a manner that would allow the bureaus to collectively change single-line rates and charges just by calling those rates and charges "rules" or "rule-related charges".

FURTHER ACTION BY CONGRESS

The Motor Carrier Act of 1980 was but a first step. It enhanced competition in the motor carrier industry by increasing the number of competitors and by reducing the powers of the rate bureaus. However, it left the shipping public with a Gordian knot which has been tightened by collective ratemaking and agency inaction. It is time to cut the knot. The statutory immunity which supports collective ratemaking must be eliminated.

Collective ratemaking is not needed by motor carriers in the 1980's. In fact, many carriers publish their rates totally outside of the rate bureaus. Collective ratemaking is not needed to eliminate discrimination, preference, or prejudice. In fact, collective ratemaking today creates discrimination against small shipments and small shippers because it provides the method by which carriers continue to increase the differential between LTL rates and TL rates. In 1979, the carriers' revenue per ton on LTL shipments was 3 times their revenue per ton on TL shipments. Today, LTL revenue per ton is almost 4 times TL revenue per ton. Collective ratemaking must be terminated.

DON'T THROW OUT THE BABY WITH THE BATHWATER

It has become clear over the past several years that the elimination of antitrust immunity has become tied to the entire subject of ICC jurisdiction. This relationship is seen in S. 1124, the Surface Freight Forwarder Deregulation Act of 1985, and in H.R. 3222, the National Motor Carrier Productivity and Safety Improvement Act. These bills show Congress' familiarity with the fact that certain limited elements of the common law and regulatory structure should be preserved for the good of the industry and the public it serves.

A key feature of the existing statute is the requirement that carriers issue bills of lading for each shipment and remain totally responsible for loss and damage to freight entrusted to their care. In further (or complete) deregulation, these duties must be preserved. Tied to this issue is the question of "released rates", rates under which carriers' liability is limited to an amount less than the full value of the freight. Shippers must continue to be given a choice between full value rates and released rates; and that choice must be reasonably proportioned to the carriers' risk.

Similarly, no common carrier should be permitted to operate without public liability and cargo insurance. Some agency, ICC or DOT, for example, should remain as the repository for insurance filings with authority to revoke a carrier's right to operate if it does not have insurance.

And careful consideration must be given to retaining, at least for some interim period, certain ICC regulations, e.g., those relating to leasing, identification of vehicles, loss and damage claims, duplicate payment claims, overcharge claims, bills of lading, C.O.D. shipments, and credit. None of these statutes or regulations reduces the extent of competition in the motor carrier industry. Stated differently, they are not "economic regulations". Rather, they simplify and standardize many technical aspects of the shipper-carrier relationship, to the benefit of all concerned.

NASSTRAC and D&TPTC offer their assistance in the work that must be done to fully effectuate the goals of the Motor Carrier Act of 1980, as well as in the important work which lies ahead for Congress.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. We heard testimony from representatives of the regulated trucking industry about the benefits of the collective ratemaking process. Do you see any benefits?

Answer. No. The rate bureaus are no longer setting the rates at which most shipments move today. Shippers and carriers set their discounts and rates on a one-on-one basis. The only functions of the rate bureaus are to collectively set general increases periodically during the year. Because of the quirk in the law which gives them antitrust immunity, the rate bureaus are functioning to inflate and thereby defeat the one-on-one rates set between carriers and shippers. The other function they are performing is to collectively approve plus charges, area pickup an delivery charges, etc. In other words, they are working today to generate money for the carriers and thereby create a higher freight bill than would exist if the carriers were left on their own in the free enterprise system.

Question. In your view, is there any need to retain antitrust immunity for trucking industry collective ratemaking activities?

Answer. No, there is no such need. Some carriers are arguing that the bureaus are needed to keep marginal carriers in business. While we do not disagree that the rate bureaus are being used to help sustain marginal carriers, the fact of the matter is that there is no need to maintain the large number of carriers out there today. By removing the entry barriers in 1980, Congress has set in place a system of nationwide carriers, a concept which should lead to fewer and more efficient carriers. There will, however, always be a place in the market for the small so-called "niche" carriers which can provide a specialty service. But such a unique carrier does not need a rate bureau for its survival.

Question. In your testimony you mention the importance of the current federal cargo liability requirements. To what extent should current liability standards be retained?

Answer. The current liability standard of full liability for loss or damage caused by a common carrier to freight in transit should be retained. The law also allows motor carriers to establish so-called "released rates", whereby the shipper declares a value of the freight prior to shipment or makes a written agreement with the carrier as to the value of its freight. In such instances, the carrier's liability for dam-

ages is limited to the declared or agreed value, so long as the agreed value is reasonable under the circumstances of the transportation. Any new statute should also preserve the option of released rates as it exists today and leave it for the courts to decide (as they did before the ICC was established) whether the released value is reasonable under the circumstances.

Question. Is such regulation really necessary, or could the marketplace effectively address this issue?

Answer. This question contains a somewhat commonly held misconception that the concept of full liability is a regulatory concept which was born with the ICC and should die with it. On the contrary, the rule of full liability is one developed by the courts and the ICC has never been invested with the responsibility to determine the merits of loss and damage claims. Thus, the current statute which provides for full liability should survive the demise of the ICC or shippers would be left in a worse position as to recovery for loss and damage than they were before the ICC was established.

The common law required carriers and forwarders, as bailees, to be responsible for the full value of loss or damage to the freight. *Coggs* v. *Bernard*, 92 Eng. Rep. 107, 1 Smith's Leading Cases 369 (8th ed. 1885). Over the years, inventive efforts were made by carriers to avoid liability for their own negligence or for theft of freight while in their custody. Thus, Congress enacted the Carmack Amendment in 1906, 34 Stat. 595 (1906), to codify the concept of full liability for all forms of carriage. Former 49 U.S.C. § 20(11), now codified at 49 U.S.C. §11707. The one judicially-recognized exception to the full liability rule was that, in instances where the shipper had represented its freight to have a certain value in order to gain the use of a lower rate, an estoppel operated to preclude the shipper from recovering more than its stated value. *Adams Express* v. *Croninger*, 226 U.S. 491, 510 (1913). This exception was itself codified by Congress in 1916 in language which now survives in 49 U.S.C. §10730(a). It provides that in certain cases the Commission may authorize a limited or so-called "released value" upon a showing "that [such] value would be reasonable under the circumstances surrounding the transportation". Id.

The law remained in that posture for many years and was summarized by the Commission in "Loss and Damage Claims", 340 I.C.C. 515, 522 (1972) as follows:

The substance of section 20(11) of the act, then, as it now applies to carriers other than those by water (which will be considered next), represents a restatement of the common law rule that a common carrier is ordinarily a virtual insurer against loss, damage, or injury to property it accepts for transportation . . ."

In 1980, Congress undertook a major overhaul of the statutes regulating motor carriers generally and railroads. The Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793 (1980), and the Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 (1980), both included major revisions in the released value provision. Both the motor carriers and the railroads are now given the right, without prior Commission approval, to publish their own release value limits. 49 U.S.C. § 10730 (b) and (c).

To summarize, the Carmack Amendment, in providing for full liability, simply codified the common law. If Congress were to repeal it as part of a deregulation bill, this could be taken as a signal that Congress is repealing or rejecting the common law rule of full liability. This will leave the shippers in terrible shape as the carriers would resume inserting disclaimers of liability in their tariffs, as they did in the early 19th Century. The matter of responding in damages for freight which a carrier has negligently lost or damaged is no more a matter for the marketplace than is the issue of whether a restaurant customer should collect when a checked coat is lost or a pedestrian should collect for being run over.

Suppose that a truck drove around with a sign on its bumper: "This Company Is Not Responsible For Its Own Negligence". Does Congress really want to hand the truckers this "right" as an unrelated accompaniment to the sunset of the ICC? We think not.

Senator PACKWOOD. Thank you.

Mr. Zegar.

Mr. ZEGAR. Thank you, Mr. Chairman, Mr. Danforth.

I am Denis Zegar, vice president for government services of the National American Wholesale Grocers Association. With me today is Mr. Bill Borghesani, NAWGA's national transportation counsel. I am also co-chairman of the Ad Hoc Motor Carrier Regulatory Reform Group which is composed of trade associations, motor carriers, shippers and consumer groups.

I would like to, Mr. Chairman, ask that a statement on behalf of the Ad Hoc Group be submitted for the record.

Senator PACKWOOD. Without objection.

Mr. ZEGAR. Thank you.

NAWGA shares a common interest with the Ad Hoc Group in seeking and supporting further reform of the trucking industry. NAWGA has consistently supported the efforts of the Congress and this subcommittee to deregulate the trucking industry.

NAWGA continues to participate in court cases and proceedings before the ICC and State public service commissions to obtain further deregulation of the trucking industry at the Federal and State levels.

NAWGA members are largely private carriers who utilize their proprietary fleets to transport products from warehouses to their customers' premises. Many members possess interstate, common, and/or contract carrier authority and transport the goods of others as toto carriers.

Our members also utilize motor common and contract carriers to obtain goods from their suppliers. Therefore, NAWGA members are thoroughly familiar with the effects of the 1980 act upon shippers, receivers, and carriers.

NAWGA wishes to endorse further reform of Federal and State regulation facing today's motor carriers. Legislation is needed which will broaden the backhaul allowance provision of section 8 of the 1980 act; abolish any vestiges of the antitrust immunity for collective ratemaking purposes which motor carriers enjoy at the State and Federal levels; eliminate ICC entry and rate regulation of motor carriers; and preempt all inconsistent State economic regulation of motor carriers when fleets are used on a dual intrastate/interstate basis.

Such legislation should preserve the insurance requirements imposed upon motor carriers. Moreover, DOT should continue to promulgate and enforce safety regulations which apply to motor carriers.

NAWGA members, food and grocery retailers, and the ultimate food and grocery product consumer, have all benefited greatly from the implementation of section 8. Section 8 permits the seller of food and grocery products who employs a uniform zone-delivered pricing system to compensate customers who pick up food and grocery products at the shipping point of the seller.

NAWGA was instrumental in supporting the backhaul allowance provision of the 1980 act. Many suppliers of food and grocery products now offer their customers backhaul allowances. Section 8 provided NAWGA members with an incentive to return to their warehouses loaded with products purchased from their suppliers rather than endure an empty backhaul.

The transportation operations of our members are now profit, not cost centers. Their transportation profits result from backhaul allowances and the general deregulation of the trucking industry. Transportation profits lead to an overall reduction in food and grocery product prices. The low food prices are mirrored by the food industry's low inflation rate which has trailed that of other industries for the past ten years.

The consumer of food and grocery products is the ultimate beneficiary of trucking industry deregulation. I urge the subcommittee and the Senate to seriously consider legislation which contains a provision that would extend the backhaul allowance provision of the 1980 act to sellers of all products, not just food and grocery products. Such a change would remove any ambiguities as to what constitutes a food and grocery product.

NAWGA opposes the continued antitrust immunity which motor carriers enjoy at Federal and State levels. This immunity permits ICC licensed motor common carriers and State regulated motor carriers to collectively set rates. This is price-fixing, pure and simple. Such rates harm NAWGA members and ultimately the public because they are not cost-based and are higher than need be.

Many NAWGA members who are private carriers have improved their proprietary fleet utilization not only through the receipt of benefits of backhaul allowances, but also acquiring interstate operating authority. Our members hold this operating authority, have eliminated empty backhauls by serving nonaffiliated outside shippers. Improved use of motor vehicles and drivers provides wholesalers with substantial savings.

Prior to the Toto decision, many NAWGA members could not productively utilize motor vehicle capacity on inbound and outbound movements. These same members today serve third parties as regulated carriers on both legs of the journey.

I wish to call to the subcommittee's attention the need for Federal preemption of intrastate economic entry and rate regulation which are inconsistent with Federal deregulation of motor carriers.

There are many States which still regulate trucking operations. I would just like to, in closing, Senator, mention also that we have been very successful in court in getting single source leasing. However, only about half the States in the United States will allow it on an intratstate basis, and that is one of the major reasons why we would like to see preemption, so that we can get the full benefit of what occurred in the 1980 act.

Thank you.

[The statement follows:]

STATEMENT OF DENIS ZEGAR ON BEHALF OF THE AD HOC MOTOR CARRIER REGULATORY REFORM GROUP

We support legislation that would modernize economic regulation of the trucking industry, in order to boost productivity, increase competition, improve truck safety and eliminate outmoded regulations and paperwork.

In the coming years, the United States will face the twin challenges of maintaining a healthy economy at home and also competing in world markets. If we are going to achieve those goals, we need a strong transportation industry and infrastructure, and that means a productive trucking industry.

Congress took a good first step in this direction in 1980 when it partially deregulated the trucking industry. The experience since then has been very positive, as deregulation has saved shippers and consumers billions of dollars, apart from boosting productivity significantly. However, there is still a lot that needs to be done.

For example, the 1980 law did not go far enough to protect small shippers from across-the-board rate hikes which are collectively set by truckers serving a region. Congress outlawed such pricefixing in other segments of the industry, but small shippers are still vulnerable to this vestige of economic regulation.

Similarly, the Interstate Commerce Commission is still involved in a vast amount of paper shuffling every time a trucker wants to add a new route. This red tape hits small truckers particularly hard.

Finally, while various controls have been lifted at the federal level, many states continue to collect truck taxes and regulate intrastate shipments in a heavy-handed manner, thus eliminating some of the efficiencies made possible by the 1980 law.

Over the past five years, Congress has given careful scrutiny to how the 1980 law has worked. It is now time to move beyond that experience. The problems that will confront our nation as we approach the year 2000 will be different from the problems we faced in the past, and that is why we need legislation which puts a new emphasis on productivity, on competition, on safety, and on meeting the needs of shippers and consumers.

To this end, we urge Congress to enact legislation that would do the following things:

1. Provide for genuine price competition in truck rates, by eliminating pricefixing where it exists at both the national and state levels.

2. Cut needless red tape for any trucker who wants to provide new service, provided they can meet tough federal safety standards.

3. End state regulation of truckers serving a regional or national market, while retaining state regulation for purely local operations that are best regulated at a local level.

4. Transfer any remaining federal regulation of the trucking industry from the ICC to the Department of Transportation, which is already responsible for regulating truck safety and insurance.

[The following information was subsequently received for the record:]

NATIONAL-AMERICAN WHOLESALE GROCERS' ASSOCIATION,
Falls Church, VA, November 14, 1985.

Senator ROBERT PACKWOOD,
U.S. Senate,
Committee on Commerce, Science, and Transportation,
Washington, DC.

DEAR SENATOR PACKWOOD: Reference is made to your letter dated October 8, 1985, concerning the recent Surface Transportation Subcommittee's September 9 hearing on oversight of the Motor Carrier Act of 1980. You asked the National-American Wholesale Grocers' Association to respond to two questions. We are, of course, very pleased to respond and to acknowledge jwith gratitude the initiative you have taken with respect to further motor carrier reform efforts.

As to your first question, you correctly noted that in the NAWGA testimony we supported a broadening of the backhaul allowance provision, Section 8 of the Motor Carrier Act of 1980. We believe a broadening would be beneficial to (1) remove any ambiquities as to what is a food and grocery product and (2) to permit other industries, outside of the food and grocery industry, to benefit from backhaul allowances and to fill up proprietary vehicles on a return haul with products that are purchased from sellers who have a uniform zone delivered pricing system.

At this time, there are some questions as to what is a food and grocery product. It has been interpreted by the Federal Trade Commission to mean products that are usually sold in a food or grocery store. But what about motor oil? Motor oil is sold in a food or grocery store very commonly. Is it a food and grocery product? This is an illustration of an ambiguity.

Another relates to a product that is unquestionably a food product, but rather manufactured for sale in a retail food and grocery outlet, but rather is manufactured, packaged and supplied after salk to an institutional customer such as a public school or hospital. A question has arisen as to whether such food products, not commonly sold in a food and grocery store, are eligible for a backhaul allowance under the 1980 Act. Removal of the ambiguity would be helpful.

Moreover, and as previously suggested, a total elimination of any restriction as to product identity should be helpful to industry in general. The backhaul allowance program for food and grocery products has been a boon to wholesale grocers' retailers and the ultimate consumer who benefits from the reduced pricing of food and grocery products occasioned by more efficient transportation movements. If the backhaul allowance provisions of Section 8 have benefited the food and grocery industry, we see no reason why they should not be extended to benefit all other industries. If they are, such change will automatically remove any ambiguities as to what a food and grocery product is. This would benefit the nation and improve productivity relative to the movement of such goods, regardless of their identity, by any industry where buyers want to use their proprietary fleet to pick up goods they are obtaining from manufacturers and suppliers.

As to your second question concerning the most beneficial aspect of the Motor Carrier Act of 1980, this is difficult to answer, paradoxically because there have been so many beneficial provisions. For example, those provisions permitting wholesale grocers to obtain ICC operating authority have been widely implemented by NAWGA members. So has the compensated intercorporate hauling provisions, Section 9 of the Motor Carrier Act of 1980. On balance, however, NAWGA would have to focus again on Section 8 of the Motor Carrier Act which permitted wholesale grocers to obtain backhaul allowances from suppliers of food and grocery products so as to enable our members to fill up their vehicles on a return haul, the inducement being the actual backhaul allowance as a deduction from the otherwise uniform zone delivered price structure that would have applied. Backhaul allowance programs are widespread among food and grocery manufacturers and are now an accepted means of effecting the distribution of those products. Prior to the enactment of Section 8, these products had to be delivered by regulated motor carriers selected by the seller, thereby offering no inducement to the buyers to use their own fleets for the pick-up of products they are purchasing. This provision of the 1980 Act has not only benefited wholesale grocer buyers, but the sellers themselves who now enthusiastically confirm the wisdom of this section of the Act. Indeed, Procter and Gamble, as you know, as a major manufacturer of food and grocery products, is publicly in support of a broadening of this provision so as to encompass all products.

I trust this response is adequate to the questions you have raised. However, if you would like to discuss NAWGA's view on these points in further detail, please feel free to let us know.

Very truly yours,

DENIS R. ZEGAR.

Senator PACKWOOD. Thank you.

Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. As you may suspect, my views will be similar to the other members of the panel. I will try not to be unduly repetitive.

I am George Green, vice president and assistant general counsel of the Food Marketing Institute. FMI appreciates the opportunity to present its views at this final oversight hearing on the Motor Carrier Act of 1980.

FMI's member companies operate over 17,000 retail food stores with a combined annual sales volume of $140 billion, half of all grocery sales in the United States. More than three-fourths of our membership is composed of independent supermarket operators.

Every one of the 15,000 items on the shelves of an average supermarket arrived at the store by truck. For this reason, FMI and its members have always been vitally concerned with the productivity, efficiency and competitiveness of our Nation's trucking industry.

Food distributors recognized early on that the Interstate Commerce Commission's economic regulation of the interstate trucking industry served only to stifle competition and limit the efficient use of the trucks used to deliver food and grocery products.

Accordingly, we strongly supported efforts in the 96th Congress to deregulate the trucking industry. The Motor Carrier Act of 1980 has been a resounding success. It has resulted in increased competition, lower rates and greater productivity.

The only thing that remains to be done now is to finish the job and completely end Federal economic regulation of the trucking industry.

The Motor Carrier Act of 1980, of course, was not a deregulation bill, but it did substantially limit ICC regulation, especially in the entry area. Unfortunately, antitrust immunity for collective setting of joint line rates and for general rate increases was preserved. Food distributors would have liked to have seen an even stronger

bill. As you well know, Mr. Chairman, the Senate version of the bill would have totally deregulated the transportation of all food products, a step strongly supported by FMI.

Still, we believe that the legislation that emerged would prove to be a good first step toward complete elimination of Federal economic regulation of the trucking industry.

Now, 5 years later, how do we view the Motor Carrier Act? In short, it has worked better than we expected, and our expectations were extremely high to begin with. As a direct result of the Motor Carrier Act, huge numbers of new carriers have begun to compete for business. Existing trucking companies have aggressively sought ways to provide better service and more attractive rates.

This has resulted in significantly better service to food retailers and wholesalers. In addition, this competition has created a downward pressure on rates that continues to this date. New independent rate actions and discount rates have benefitted all types and sizes of shippers and ultimately our Nation's consumers. There is no doubt in our mind that truck rates are lower than they would have been under the old style of heavy-handed regulation.

The Motor Carrier Act has provided great opportunities for private truck operators to increase the productivity of their fleets. Food retailers and wholesalers, individually and collectively, are among the largest operators of private fleets in our country, and our industry has taken advantage of these great new opportunities.

Among other things, customer pickup, intercorporate hauling, the creation of new for-hire trucking subsidiaries, and innovative new leasing arrangements have all become possible since 1980. As a result, empty miles have been eliminated, fuel saved, and productivity increased.

The ICC has reported that food distributors have saved over $460 million by the end of 1983 through the increased backhauling that resulted from the provisions in the 1980 law. According to the Commission, these savings have increased every year since the law went into effect, and they are still growing.

The ICC has further reported that these savings are being passed through to consumers because of the competitive nature of the food retailing business.

So, given these great results, do we need to do more? Absolutely. There is no good reason why someone who wants to go into the trucking business should have to get permission from the ICC. There is no good reason why millions of pages of tariffs must continue to be filed with the Commission when no one ever looks at them, let alone challenges them.

But most importantly, there is no good reason why regulated truckers should retain any antitrust immunity. Collective ratemaking or, more accurately, price fixing, is directly counter to established antitrust policy.

I ask you what the reaction would be if all the supermarkets in a particular area got together and announced an across-the-board 5-percent increase on every item in every store. Public outrage would be followed shortly by visits to the courthouse for all concerned.

Yet, regulated carriers can, and do, announce such rate increases regularly. Truckers and their rate bureaus do not need antitrust

immunity to perform their legitimate functions. Remaining antitrust immunity should be eliminated.

FMI has endorsed legislation recently introduced in the House of Representatives that would eliminate all the remaining outmoded motor carrier regulation. In addition, the legislation attempts to get at the most difficult problem now facing those operating trucks in more than one State. That is the lack of uniformity among the States concerning licensing, registration, and taxation and the efforts by some States to regulate that which the Federal Government has recently deregulated.

This resulting maze of paperwork, fees, and State regulatory schemes, along with rapidly escalating fuel and highway taxes, has become extraordinarily burdensome. Mr. Chairman, at this time I would like to submit for the record a letter from H.E. Butt Grocery Co., a food retailer operating in Texas, a very highly regulated State, outlining in some detail the benefits resulting from the Motor Carrier Act of 1980 and the difficulties that remain to be overcome.

Finally, Mr. Chairman, we commend you for your leadership on this issue. We encourage you to introduce your own deregulation bill which will address the concerns we have raised, and we urge this committee to favorably report a deregulation bill as expeditiously as possible.

Thank you.

[The statement follows:]

STATEMENT OF FOOD MARKETING INSTITUTE

The Food Marketing Institute (FMI) appreciates the opportunity to present the views of food retailrs and wholesalers at this final scheduled oversight hearing on the Motor Carrier Act of 1980.

FMI is a non-profit association that conducts programs in research, education and public affairs on behalf of its 1,700 members—food retailers and wholesalers and their customers. FMI's member compaines operate over 17,000 retail food stores with a combined annual sales volume of $140 billion—half of all grocery sales in the United States. More than three-fourths of FMI's membership is composed of independent supermarket operators or small regional firms.

Every one of the 15,000 items on the shelves of an average supermarket arrived at the store by truck. For this reason FMI and its members have always been vitally concerned with the productivity, efficiency and competitiveneess of our nation's trucking industry. Food distributors recognized early on that the Interstate Commerce Commission's economic regulation of the interstate trucking industry served only to stifle competition and limit the efficient use of the trucks used to delivery food and grocery products to our nation's consumers. Accordingly, we strongly supported efforts in the 96th Congress to deregulate the trucking industry. We were quite pleased with the legislation that was ultimately enacted.

The Motor Carrier Act of 1980 has been a resounding success. It has resulted in increased competition, lower rates and greater productivity. The only thing that remains to be done now is to finish the job and completely end federal economic regulation of the trucking industry.

The Motor Carrier Act of 1980, of course, was not a deregulation bill. But it did substantially limit ICC regulation, especially in the entry area. It's now much easier to receive operating authority from the ICC; but applicants still must go through the red tape of filing for authority and waiting for permission to service their customers. The bill also gave carriers a great deal of additional rate freedom. Some antitrust immunity for collective rate making was gradualy eliminated. However, antitrust immunity for joint-line rates and for general rate increases was preserved.

Food distributors would have liked to have seen an even stronger bill. As you well know, Mr. Chairman, the Senate version of the bill would have totally deregulated the transportation of all food products, a step strongly supported by FMI. Still, we

believed that the legislation that emerged would prove to be a good first step toward complete elimination of federal economic regulation of the trucking industry.

Now, five years later, how do we view the Motor Carrier Act of 1980? In short, it has worked even better than we expected (and our expectations were extremely high to being with). It's opened up the for-hire trucking industry to competition and it has also led to a substantial increase in the productivity of private carrier fleets. These results prove beyond any reasonable doubt that there is no useful public purpose to be served by any continued trucking regulation by the ICC.

As a direct result of the Motor Carrier Act huge numbers of new carriers began competing for business. Existing trucking companies have aggressively sought ways to provide better service and more attractive rates. This new competitive environment has resulted in significantly better service to food retailers and wholesalers from regulated carriers. In addition, this competition has created a well-documented and well-needed downward pressure on rates that continues to this date. The influx of independent rate actions and discount rates has benefited all types and sizes of shippers and ultimately our nation's consumers. There is no doubt in our minds that truck rates are lower than they would have been under the old style of heavy-handed regulation.

As I have mentioned, the Motor Carrier Act has provided great opportunities for private truck operators to increase the productivity of their fleets. Food retailers and wholesalers, individually and collectivley, are among the largest operators of private fleets and our industry has taken advantage of these great new opportunities. Among other things, customer pickup, intercorporate hauling, the creation of new for-hire trucking subsidiaries and innovative new leasing arrangements have all become possible since 1980. As a result, empty miles have been eliminated, fuel saved and productivity increased.

The ICC has reported that food distributors saved over $460 million by the end of 1983, through the increased backhauling that resulted from the provisions in the 1980 law. According to the Commission these savings increased every year since the law went into effect and they are still growing. The ICC further reported that these savings are being passed through to consumers because of the competitive nature of the food retailing industry.

So, given these great results, do we need to do more? You bet! There are still benefits to be gained by completing the deregulation process. The remaining vestiges of ICC regulation still present some impediment to free entry and should be eliminated. There is no good reason why someone who wants to go into the trucking business should have to get permission from the government. Safety and fitness issues are given short shrift at the Commission. These issues would be much more appropriately and effectively handled at Department of Transportation. In addition, there is no good reason why millions of pages of tariffs must continue to be filed with the Commission where no one ever looks at them, let alone challenges them.

But most importantly, there is no good reason why regulated truckers should retain any antitrust immunity to set rates collectively. Collective rate making, or more accurately price-fixing, is still allowed for joint-line rates and for general rate increases. This is directly counter to established antitrust policy. I ask you what the reaction would be if all the supermarkets in a particular area got together and announced an across the board 5 percent price increase on every item in every store to cover their cost increases. Public outrage would be followed shortly by visits to the courthouse for all concerned. Yet regulated carriers can, and do, announce such rate increases regularly. Truckers do not need antitrust immunity to set joint rates and rate bureaus do not need antitrust immunity to perform their legitimate clearing house and publication functions. Remaining antitrust immunity is simply a vestige of the discredited protectionist theory of regulation and it should be eliminated.

FMI believes that it is now time to complete the deregulation process. We have endorsed legislation (H.R. 3222) recently introduced in the House of Representatives that would eliminate all the remaining outmoded motor carrier regulation. This bill if enacted would promote competition and productivity and improve safety at the same time by beefing up DOT safety jurisdiction.

In addition, the legislation attempts to get at the most difficult problem now facing those operating trucks in more than one state. That is the lack of uniformity among the states concerning licensing, registration and taxation and the efforts by some states to regulate that which the federal government has recently deregulated. This resulting maze of paperwork, fees and state regulatory schemes, along with rapidly escalating fuel and highway taxes has become exraordinarily burdensome.

H.R. 3222 creates a new class of carrier for those serving three or more contiguous states. Under the legislation, these carriers will be able to service all customers, interstate and intrastate, without inhibition and they will benefit from uniform

state registration, fees and taxation systems. This would be a significant improvement for private and for-hire carriers, and most especially for the independent truckers, upon whom food retailers rely for the transportation of perishable commodities.

I would like to submit for the record a letter from H.E. Butt Grocery Company, a food retailer operating in Texas, outlining in some detail the benefits resulting from the Motor Carrier Act of 1980 and the difficulties that remain to be overcome.

Mr. Chairman, we commend you for your leadership on this issue. We encourage you to introduce your own deregulation bill which will address the concerns we have discussed. And we urge this Committee to favorably report a deregulation bill as expeditiously as possible after it is introduced.

Thank you for your consideration.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. In your testimony you state that "there is no useful public purpose to be served by any continued trucking regulation by the ICC." Do any of the current regulations benefit your members?

Answer. The current regulatory scheme is totally counterproductive. In recent years the ICC has adopted a number of rules which promote the efficient use of private fleets and encourage competition in the for-hire industry. These rules obviously benefit our members. But they would not be necessary if regulation did not exist in the first place. Then all carriers would be freed to operate in the most efficient manner possible, subject only to the constraints of the market place and the antitrust laws that apply to all other industries.

Question. You note in your testimony the problems caused by State regulations which affect interstate trucking operations. How serious is this problem?

Answer. This is a very serious problem and one that is growing at an alarming rate. The lack of uniformity among the states concerning licensing, registration and taxation causes substantial difficulties and increased costs for all carriers operating in more than one state. In addition, many states still maintain strict economic regulation of the trucking industry. In many cases these state regulatory schemes impose the same barriers to efficient private carrier operations that have recently been removed at the federal level. Private carrier operating authority, intercorporate hauling, single source leasing and trip leasing among other things are all prohibited in some states. Thus it is essential that any federal trucking deregulation bill include provisions preventing the states from regulating that which is deregulated federally.

Senator PACKWOOD. Thank you, Mr. Green.

The staff contacted other groups representing consumers, in addition to Public Citizen, especially contacted them if they wanted to come and testify as to any downsides of the effect of deregulation.

Public Citizen has been involved in this effort from the start, back when we passed the act in 1980, and the other consumer groups said no, they had not been heavily involved in the issue, but there were no downsides from the consumer standpoint. We made an honest effort to find groups that represented consumers that might have said this is not working out well, or prices have gone up.

We could not find one that wanted to come, and as most of you are aware, those groups abound in great numbers and are not hesitant to come here and speak before Congress if they think that consumers are being done in.

So, Mr. Hitchcock, I am going to presume that your formal statement would indeed be echoed by the other groups if they were to come and testify.

Mr. HITCHCOCK. Well, back in the 1980 debate there were various groups that were very active at the time, Consumers Union and others. My sense is that they are still interested, and I have no

reason to believe they have changed position. I think the attitude is that if our group is still taking a lead on that, they are willing to let us do so, and they may not see any necessity or reason in making their own statement.

I have talked with people in other groups, and the sentiment is pretty much as you indicated.

Senator PACKWOOD. I look at the other five witnesses here, and except perhaps the household goods industry, you have got to represent, I swear, 95 percent of the people in this country who ship things. You either ship them to your consumers or you are the recipients of other people shipping to you. Indeed, as I look at the cross section of who you represent, including speaking for NASTRAC today, you represent not just major retailers in large towns, you represent little teeny retailers in little teeny towns, and you would surely be aware of any problems that existed if your little teeny retailers in your little teeny towns could not ship or receive. I mean, your own members would be complaining to you about it. And I think I can say uniformly for the broad cross section you represent of I will call them shippers and receivers, you have had relatively few complaints with the existing system. Almost your uniform recommendation is let's continue right on and get rid of the rest of it.

Is that a fair statement for the five of you?

Mr. ANDERSON. Absolutely.

Mr. COPPER. Yes, sir.

Senator PACKWOOD. I was curious, Mr. Anderson, with one point you raised, and I have not seen any other witness raise it. This has to do with the confirming letters on the rates and then some difficulty in holding carriers to the price that the letter quoted.

Can you elaborate on that a little bit?

Mr. ANDERSON. Yes, Mr. Chairman, I am glad you raised that particular subject. It is one that has affected some of our members very significantly. It involves the Elkins Act aspect of the Interstate Commerce Act inasmuch as the published rate is considered to be the proper rate to be charged per a given movement. In those situations where a carrier and shipper negotiate a different rate, generally a lower one, but the carrier fails to file that rate with the ICC——

Senator PACKWOOD. Bring it down to a specific. The published collective rate is $100 a ton, and the carrier says to you we will do it for $70 a ton, and they send you a letter saying we will do it for $70 a ton.

Now, what happens, what goes wrong?

Mr. ANDERSON. If the shipper tenders traffic under the new $70 rate for one shipment or for several hundred shipments, the $70 rate is binding until such time as the carrier becomes disenchanted with the business, goes bankrupt, or runs into financial difficulty. At that time, those freight bills may be turned over to a collection agency by the carrier or by the court, and the shipper will find himself faced with a bill of some magnitude for all of the shipments made under the unfiled rate.

Senator PACKWOOD. You mean the carrier goes bankrupt, and the bankruptcy judge or the court or the referee comes and says, I

do not care what this letter said, the honest rate, the real rate is $100 a ton, and you owe us $30 a ton.

Mr. ANDERSON. That is correct.

Senator PACKWOOD. And this may be 2, 3, 4 years later.

Mr. ANDERSON. That is correct.

Senator PACKWOOD. And at that stage, what is the state of the law? Here you say, I have a letter. This bankrupt company told me they would haul it for $70 a ton, they did it for 2 years. Now they have gone bankrupt.

What is the legal status of that letter?

Mr. ANDERSON. Under the Interstate Commerce Act, that letter has no legal status.

Senator PACKWOOD. Someone behind you has his hand up.

Mr. SWEENEY. Dan Sweeney. I am the counsel for NASSTRAC.

We are running into the same kind of problem. There is a traditional rule of law in courts where they say whatever the carrier published in the tariff, that is it. We do not care what he told you over the phone or what he offered you and so on and so forth. And of course, this rule goes back maybe 50 years, to a time when there was just a handfull of tariffs and carriers pretty much all charged the same rate. Today you have billions of rates out there, and no shipper can keep track of all these rates.

In the first cases coming along with the ICC, and even in court, they are starting to go in the direction, well, maybe that is the rate published but this is the rate you offered, and we think it is an unreasonable practice for you to come back a year later and try to charge that higher rate simply because you as a carrier never published it.

So there is a dynamic situation going on in the law. There is a changing of the rule. The ICC is looking at the problem; the courts are looking at the problem, and they seem to be more understanding of the shipper's problem than they were 50 years ago. But of course, this is something that Congress, if Congress could take a look at it and clarify that situation and say that where a rate was offered and accepted, that the carrier cannot come back in court for a higher rate in the tariff.

It would save millions of dollars and probably thousands of lawsuits.

Senator PACKWOOD. Basically, all they are asking for is what in most other areas would be normal contract law.

Mr. SWEENEY. Exactly.

Senator PACKWOOD. Here is the binding contract, and it does not matter what they might have published generally or said to somebody else.

Mr. SWEENEY. It is a problem that arises from regulation, the fact that the regulation was there, the court said we do not want to touch this because it is regulated. Now the courts are starting to be more sympathetic.

Senator PACKWOOD. When you go to no collective ratemaking you take care of part of the problem. Then all you are dealing with is the individual tariff of a company against the letter of the company. You are not having to go to at least some outside reference.

Mr. SWEENEY. That would certainly be helpful.

Senator PACKWOOD. Senator Danforth.

The CHAIRMAN. No questions, Mr. Chairman. Thank you.

Senator PACKWOOD. Gentlemen, I did have prepared lots of other questions, but frankly, I do not need to ask them. I will just summarize, and you tell me if I am wrong.

As a matter of fact, do not bother to tell me.

Most of you would like to see some degree of preemption so that you do not have a whole variety of miscellaneous State actions, some of it in the guise of safety or insurance, but much of it ending up as regulation by any other name.

Is that a fair statement?

[Witness nod in the affirmative.]

Mr. ZEGAR. Mr. Chairman, could I just say one thing about that, just to give you a classic point on why this is so important?

You take the State of Texas, for instance, which we are very actively involved in right now. If you are a trucker and you want to ship intrastate, you have to be able to show that there is a need for your service and go before the rate bureau and demonstrate need.

Well, you really should not have to do that. It would be the same example as if there is a McDonald's on a corner and you want to open a Burger King up, and you have to prove that there is need for you to compete, and this is, whether it be in Texas or anywhere else on the intrastate basis, it is getting very, very difficult for us to be able to effectively and expeditiously get product to the supermarkets, to the stores and so forth at a price that is very competitive. And that is the primary need for the preemption, because we are on a—interstate and intrastate for us is one and the same thing.

Senator PACKWOOD. Gentlemen, I have no more questions.

Thank you very much for a most illuminating panel.

Next we will take the panel of Tim Lee, Dr. Stanley Hille, and Frank Taylor.

We will start with Mr. Lee. I might introduce him as not only an old friend of mine but a fellow that worked for me for a number of years as a young legislative assistant years ago.

Well, it is not that many years ago, as a matter of fact. You are not that old, Tim. You went out to Oregon and thought that there was money to be made in the transportation brokerage business. You had some serious difficulties with the ICC initially. We managed to break that logjam, and you and your partners started a company in 1980 that had, what, about $750,000 in revenues, and last year you exceeded $20 million in the freight brokerage business.

Mr. LEE. That is correct.

Senator PACKWOOD. Tim, go right ahead.

STATEMENTS OF TIM H. LEE, CHAIRMAN, GOVERNMENTAL LIAISON, TRANSPORTATION BROKERS CONFERENCE OF AMERICA; STANLEY J. HILLE, DEAN, COLLEGE OF BUSINESS AND PUBLIC ADMINISTRATION, UNIVERSITY OF MISSOURI; AND FRANK W. TAYLOR, JR., PRESIDENT, TRANSPORTATION LAWYERS ASSOCIATION, ACCOMPANIED BY MARK ANDREWS, CHAIRMAN, LEGISLATIVE COMMITTEE

Mr. LEE. Thank you, Mr. Chairman.

I am Tim Lee. I am chairman of the Liaison of the Transportation Brokers Conference of America, and I am vice president and co-owner of Superior Transportation Systems [STS], a brokerage in Wilsonville, OR.

The Transportation Brokers Conference of America was founded in 1979 and consisted at that point in time of only five licensed broker members. Today the Transportation Brokers Conference represents over 1,000 of the some 4,000 licensed ICC brokers. As vice president-owner of my own company, STS started in 1980, as you indicated, with less than $1 million in gross sales. We had four employees including myself. Today, 5 years later after opening our doors, we employ some 60 fulltime employees in three west coast offices with projected fiscal year 1985 sales of about $23 million. In 1985 we will arrange transportation for over 22,000 truckloads of traffic, origined and destined from and to points throughout the United States, as well as arranging boxcar, TOFC, warehousing, LTL and consolidation services for our shipping customers.

Today I am here to review the main three points of my testimony. First, we have a serious problem with the inconsistent and varying State regulations of transportation. While the Federal Government has been deregulating, our concern is of the States that have replaced those regulations with conflicting sets of rules. Without harmonization among the States, few companies have the time or cost ability to comply with the fuel and use taxation methods, bonding and insurance requirements that vary from State to State.

In fact, we would question if there exists today a single motor carrier licensed to operate in the 48 States that is in full compliance with each of the States specific requirements.

Varying State regulations also present economic inequities. STS, for example, arranges the transportation of identical shipments of pulp and paper products from both St. Helens, OR and Longview, WA to the small community of Halsey, OR, located about 100 miles south of Portland. Due to conflicting State regulations, we must charge nearly twice per truckload more on the intrastate Oregon shipment which is actually 20 miles closer to Halsey than Longview. No economic justification; just State regulations.

If the States are unable to develop uniform standards of their own, we urge Congress and this committee to give serious consideration to the total Federal preemption of the States' jurisdiction in this regard.

Second, and without being too redundant, to touch briefly on rate bureaus, we feel there no longer exists a need. Chairman Taylor I think gave us a good example earlier by the substantial change in independent actions by motor carrier members of existing rate bureaus.

We see the rate bureaus today as merely an entity that sets top end pricing from which individual carriers simply discount down from, or negotiate separate contracts as a contract carrier.

Finally, Mr. Chairman, we, STS and the Transportation Brokers Conference of America, wholeheartedly applaud the enactment of the Motor Carrier Act of 1980 and the rebirth of healthy competition in the motor carrier marketplace. While a blanket statement suggesting that Federal deregulation of everything is in the general public's best interest would be a considerable overstatement, the

mere fact that Congress, the people's voice, has continued down the deregulatory path in many industries for nearly a decade now gives strong credence to the fact that the free enterprise system upon which this country was founded is what the people want, simply, Mr. Chairman, because it works.

And while we will all agree that certain utilities and public safety concerns exist, and by necessity must be administered from a Federal level, competition, in its purest form, is clearly the single best method of fostering and maintaining efficiency, whether referring to in terms of cost or service.

While criticisms have come from a few carriers that have fallen since the implementation of deregulation, in any thriving competitive environment those who will not modernize and efficientize their operations will be unable to keep up with their competition. At STS during 1985 alone we have afforded our customers transportation savings of over $1.5 million. This was made possible by the flexibility provided by the Motor Carrier Act of 1980. Without this legislation, there is little doubt that the Transportation Brokers Conference of America would have grown much past its original handful of members, and more certainly, Mr. Chairman, STS, would not be in existence today to offer jobs to our over 60 employees, to provide loads and subsequent revenues to carriers that once moved empty on those same backhaul lanes, and to allow our shipping customers to put this year's $1.5 million savings to more productive use.

Thank you for your time. I will take any questions you have.

[The statement follows:]

STATEMENT OF TIMOTHY H. LEE, CHAIRMAN OF THE LIAISON COMMITTEE, TRANSPORTATION BROKERS' CONFERENCE OF AMERICA, INC. AND VICE PRESIDENT, SUPERIOR TRANSPORTATION SYSTEMS, INC.

Thank you, Mr. Chairman and members of the Committee. My name is Tim Lee, and I am the Chairman of the Liaison Committee of the Transportation Brokers' Conference of America, Inc. (TBCA herein), and the Vice President of Superior Transportation Systems, Inc.

I wish to present testimony in this proceeding in regard to the Motor Carrier Act of 1980.

IDENTITY AND QUALIFICATIONS

I am the Vice President of Superior Transportation Systems, Inc., which is one of the nation's leading domestic transportation brokerage companies. I am also Chairman of the Liaison Committee of the Transportation Brokers' Conference of America, Inc., which is the trade association representing over 1000 of the over 4000 ICC licensed transportation brokers. STS is one of the more aggressive of the new transportation brokerage companies which were founded in the wake of the Motor Carrier Act of 1980. In fact, the application filed by STS's affiliated motor carrier, Shippers' Freight Services, Inc. in 1980 for contract carriage authority to serve STS (ICC MC-152609 Sub No. 5) became the landmark decision that confirmed Congress' intentions as to the definition of a shipper and the proper role of a broker.

The Motor Carrier Reform Act of 1980 was clearly the engine of improvement that was sorely needed to change the way we think about trucking and about transportation in general. In interstate commerce, the Act made possible the efficiencies that benefit business and consumers alike.

Today, STS employs over 60 people, full time, and has grown from the less than three-quarters of a million dollars in gross sales maintained when we started our company in 1980 to projected gross sales of over $22 million for our current fiscal year 1985. Over the last three years, STS has paid over $200,000 in State and Federal income tax, and has been responsible for the payment of over $500,000 in highway and fuel use tax in our home state of Oregon, alone.

In addition to our regular routing of TOFC, rail and LTL traffic, STS currently routes some 1,800 truckloads of freight on a monthly basis. Under Federal deregulation, as a brokerage, we have been able to develop new systems to serve smaller communities by promoting shipment consolidation and enabling truckers to make multiple stops to communities along their routes, without bringing their shipments to a central distribution point for redistribution. This has enabled us to provide more expeditious, more reliable service at a lower cost to smaller communities.

My purpose in describing for you the success of this company is to point out that the reason of our success has clearly been the relaxed rules as to entry into brokerage and the relaxed rules as to how a broker could operate in the transportation marketplace.

Prior to the passage of the Motor Carrier Act of 1980, I doubt very much that our companies could have expanded or carved out the niche in the marketplace that we have been able to achieve now. When we set up our affiliated motor contract carrier, we realized that this would not have been permitted before the passage of the Act, and although it took us a considerable amount of time and expense to push our application through the Commission, when we obtained our authority, we were in an excellent position to provide the type of innovative service the Act contemplated.

We thus feel that deregulation has enabled us to provide a quality service to shippers and carriers, a service that we could not have provided under old motor carrier regulations.

I therefore feel that as co-owner of our company, and as chairman of the Liaison Committee of the TBCA that we should expressly indicate to Congress our support of the Motor Carrier Act.

I have been concentrating to a certain extent on my own company, but I am speaking for the Transportation Brokers' Conference of America, Inc (TBCA), which, in itself, is virtually a result of the Motor Carrier Act of 1980. I have used my company as a example, but the goals we have been able to achieve are symptomatic of the great strides that brokerage itself has been able to achieve since the relaxation of regulation promote specifically by the Motor Carrier Act of 1980.

In 1978, there were fewer than 25 licensed brokers who were active in this country. In 1985 there are more than 4,000 licensed brokers. In 1978 the brokerage industry controlled less than $250,000,000 worth of transportation revenue. In 1985, the brokerage industry will particiapte in more than 4 billion dollars of motor carrier transportation. Further, the brokerage industry has reached out to form new concepts in transportation. It has organized a shippers' association on international traffic, and has set up computerized load matching on domestic traffic. Brokers cobroker with each other throughout the country and serve as a matchless source for obtaining back-haul traffic for both newer and more established ICC certified carriers unable to afford their own marketing efforts toward this end.

Additionally, the TBCA is developing and promoting a self imposed, comprehensive certification process that will help insure the shipping public against less scrupulous brokers and carriers. To the same end, the TBCA is in the process of implementing shipper and carrier protection-oriented insurance and bonding requirements for its members that far exceed existing federal requirements; all of these, in my opinion, representing excellent examples of how the free enterprise system fostered by the MCA of 1980 promotes more comprehensive and efficient means of addressing the needs of carriers, shippers and the public alike.

Many of us think the problems and dislocations that might have grown out of the change in regulation have been significantly lessened by the presence of the brokerage industry in transportation. Brokers have been able to obtain traffic from carriers where the carriers previously could not obtain traffic, and thus the great growth in the carriers' operating authority has been supported by the greater ability of brokers to utilize that authority.

It is for that reason that the Transportation Brokers' Conference of America affirms its support for this legislation.

What I wish to convey to this Committee first and foremost is that, in the opinion of this company of which I am Vice President, and the conference of which I am the Chairman of the Liaison Committee, deregulation works. It has put the entreprenurial force back into American transportation.

In that regard, I would like to address here three specific subjects. The first is the question, if further deregulation occurs, whether the states will step up their efforts to further regulate the brokerage industry and the transportional industry in general. I hope that if any further legislation is drafted or introduced that it will assure the transportaton industry that there will not be the potentiality for further burdensom State regulations replacing or conflicting with Fedral regulations. The federal initiative as far as it goes, must be made 50 times as strong, by serving as the

model for each of the 50 states and their hodge-podge of rules, pricing and routing requirements that tend to disserve the public interest. Interstate deregulation has made possible a host of specializations and economies that brokers are uniquely qualifed to provide customers. Unfortunatley, in intrastate commerce, serviceing two points that happen merely to be within the State's boundaries is another matter entirely. The result is often less service, at a higher cost.

I recognize the committee's jurisdiction, as well as that of Congress, falls short of the States, but we strongly feel Congress has a role in working with state officials to demonstrate, persuade and provide incentives to the States to, at the very least, take advantage of federal experience in fashioning improvements within State regulation to accomplish the same goals. Without harmonization and a healthy dose of common sense, the dispaity between federal deregulation and State regulation will continue to be in abyss that will confound truckers, shippers, brokers and consumers alike.

In reciting a practical example I gave in earlier testimony, one of our major customers maintains and operates from both St. Helens, Oregon (a distance of 115 miles) and from Longview, Washington (a distance of 135 miles). However, under state rules we must charge a minimum of $287.50 per truckland from St. Helens and only $195 per identical truckload from Longview, which is 20 miles further but just happens to be out-of-state. STS routes empty equipment along this same corridor 10 to 15 times daily, yet intra-stae regulations require us to charge nearly twice what STS's carriers could operate for profitably.

While I again recognize that Congress and the Federal Government have little role over state regulations, we believe the problem merits serious attention by all who are committed to a sensible, cost-efficient national transportation system. We urge the committee to once again use its leadership to help resolve these issues among the states.

From the vantage point of businessmen, we have worked hard to communicate our concerns with state regulators and on behalf of our shippers and truckers, to try to reconcile the regulatory complexities and obstacles as they occur. And, in good conscience, in Oregon at least, we do find they are beginning to listen.

To address the need for uncomplicating state requirements, the Federal Government should propose and set standards for uniform state vehicle registration for state implementation. Uniform, logical standards should not, however, be overseen by a new Federal bureaucracy, but instead by existing state authorities. To gain compliance by the states, the Federal Government should consider conditioning the appropriation of highway funds and grants to adoption, or, if need be, federal preemption of the states jurisdiction.

Also, to begin to understand the dimension of the problem and to find national solutions, Congress should use its leadership to direct the DOT, the ICC and the NARUC together to assess what unreasonable burdens or chilling effect the state regulatory processes (both operational and economic)—in sum—make on interstate commerce. In addition to a realistic assessment, the parties should recommend to Congress what steps can be taken by both the Federal Government and State governments to eliminate as much of the regulatory underbrush as possible.

Second, with regard to rate making, I think the need for rate making bureaus has been significantly dissolved by the proliferation of contract carriers and respective contract negotiations. I don't know what the necessity for the continued existence of rate bureaus is, but I think that as contract carriage becomes more and more the way in which transportation is effectuated, that even an implied need for rate bureaus will disappear.

In my current knowledge and understanding of rate making bureau's activity, it seems that they do little more other than to establish a top-end pricing point from which all carriers, common and contract alike, negotiate downward discounts. In other words, most all individual carriers establish and negotiate their own discount levels to the rate bureau's. In that regard, personally, I seriously question the value added by an entity that establishes seemingly arbitrary rate levels under which an insignificant volume of traffic moves under.

Finally, I want to touch on the point as to whether the Motor Carrier Act of 1980 has actually increased competition. I think that after listening to my testimony here that it would be redundant for me to point out that the Motor Carrier Act of 1980 significantly enhanced competition in the transportation industry to benefit all. Via our operations alone, savings in transportation charges afforded STS' customers has been estimated at over $1.5 million in our Fiscal Year 1984.

While there are those that would counter by pointing to the financial casualties that have fallen in the wake of motor carrier deregulation instigated by the MCA of 1980, I would contend that, by and large these casualties were a result of the ineffi-

ciencies that were fostered and breeded by over 40 years of federal regulation. The mere fact that many older established carriers, both small and large alike are fairing quite well in the newly deregulated environment gives strong credence to the ultimate success of the changes brought about by the MCA of 1980.

Today, STS has under contract over 100 ICC certificated motor carriers domiciled throughout the U.S. The diversity of these carriers range from small to large, union operated to non-union, owner/operated and company driver based fleets to several private fleets operated by Fortune 500 companies and small regional manufacturers. By and large, the financial fitness of all STS' carriers is good to excellent. And, in closing, therefore, I would contend that these last statements, perhaps, offer the best examples of just how truly well deregulation of the motor carrier industry is working for all participants; shippers, brokers, the general public, and motor carriers of all types and sizes.

Thank you very much for your time, interest and attention. I will be more than happy to answer any questions you have at this time.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. In your testimony you state your support for total trucking industry deregulation and note the benefits of regulatory reform to date. In your view, do any of the current Interstate Commerce Commission regulations need to be retained?

Answer. Not with regard to "economic regulation" of the industry. Our response here would refer to all facets of the industry, i.e. TL, LTL, freight forwarding, intermodal, etc., etc. The industry has grown and diversified enough over particularly the last 5–8 years to where we find it extremely difficult to regard "trucking" as a "Public Utility" in the conventional sense. In our opinion, therefore, we believe that any further form of or continued regulation would be non-productive and not in the public's best interest. We beliee in those situations where predatory pricing and monopolistic scenarios are potential concerns, that current antitrust laws, enforced properly, would protect the public's interest. However, in that regard, we do believe that some form of education process be established and made more readily available to those smaller and newer entrants to the industry.

With regard to "fitness", however, we do not believe that current laws (more specifically those regulations enacted by the ICC Act) go far enough. While our response applies to all forms of motor carriage and transportation in general, we would address particularly the brokerage industry. We feel that the current $10,000 "Surety Bond" requirement does little more than to represent a minimal barrier to those entities that have not yet established minimal credit with a banking or insurance organization. We are aware of *NO* transportation entity that has successfully collected sums owed by virtue of the broker maintaining a surety bond. In that same regard, the $10,000 requirement on the bond falls far short of what the public would require to obtain significant protection. Even the smallest licensed brokers (and motor carriers, for that matter) maintain accounts payable balances for the excess of $100,000.

In brief summary, we would recommend that; 1) All economic regulatory requirements be removed, however, that; 2) Increased standards for "fitness", safety and insurance be substantially upgraded and enforced understanding that the Department of Transportation may very well be a more appropriate entity than the ICC to establish and enforce these efforts.

Question. We heard testimony on September 9th which asserted brokers engage in unscrupulous practices, by not informing shippers and carriers alike of the actual freight charges. What is your response to this claim?

Answer. With regard to "unscrupulous practices", we would contend that the transportation/trucking industry employs "people" just as other industries do and that our industry is subject to the same "unscrupulous" practices of people that other industries are. We would contend quite adamantly that today's motor carriers are just as guilty, if not more so, of failing to inform their owner/operators and/or "tripleasing carriers" of actual freight charges and driver/carrier settlement amounts. We do not wish here to "re-point the finger", rather would point out, again, that "unscrupulous practices" are not germane to the brokerage industry, only to unscrupulous people.

With specific regard to the unscrupulous practices referenced in Question 2 above, we would offer the committee food for thought by asking "how do other non-regulated industries agree on, commit to and invoice for rates and charges between par-

ties?" At my company, STS, with very limited exceptions, all rates and charges are agreed to between the broker and the carrier and the broker and the shipper, in writing, prior to ever moving a shipment. Virtually all of our agreements with our carriers and shippers are reduced to some form of black and white contract. This is not a difficult or expensive undertaking for even the smallest broker, carrier or shipper.

We would summarize our response by conveying our contention that many, if not most, of the "unscrupulous practices" engaged in today by brokers, carriers and some shippers would be substantially reduced were some of the fitness standards we suggested in Question 1 implemented and enforced. We would add that the Transportation Brokers Conference of America (TBCA) is already working internally with its membership to incorporate and require of themselves many of the fitness standards addressed herein and would welcome the opportunity to discuss these items with the Committee.

TUCKER CO.,
Westville, NJ, October 29, 1985.

SUPERIOR TRANSPORTATION SYSTEMS, INC.,
Post Office Box 519,
Portland, OR.

Attention: Mr. Tim H. Lee, Vice President.

DEAR TIM: In response to the second question which Senator Packwood's committee has put to you, I would like to applaud your answer and also to add my two cents as follows:

For fifty years brokerage has suffered some serious "bum raps". But I have noticed over the years whenever you check out the details of some alleged abuse by a "broker" it turns our that the offending party was not a broker, it was some other transportation related entity.

That phenomenon is still continuing. We have yet to hear one actual case or headline in the last seven years of wide open brokerage, in which a legitimate businessman, ICC licensed broker was involved. That's a headline in itself so far as I'm concerned and Senator Packwood's committee should certainly be made aware of it.

I am enclosing a copy of a presentation I made to the Southern Shippers and Motor Carrier Conference in October of this year and, because of the short time, am forwarding a copy of this letter and speech to Ms. Karen Borlaug Phillips of Senator Packwood's Committee as well by express mail.

Again Tim, My compliments on a job well done. I hope my two cents here helps to further clear the water rather than muddy it.

Very truly yours,

WILLIAM J. TUCKER, *President.*

Attachments.[1]

Senator PACKWOOD. Thank you.

Dr. Hille.

Mr. HILLE. My name is Stanley Hille. I am the dean of the College of Business and Public Administration at the University of Missouri, Columbia. I very much appreciate, Mr. Chairman, the opportunity to come here and testify.

My emphasis today will be on the general freight carriers, those carriers that I call the LTL, or less-than-truckload carriers, which is a segment of the motor carrier industry that is especially important to small business. LTL carriers hold themselves out to serve the public in general. They have common carrier obligations, and I think they still maintain many of the characteristics of a public utility where they have to treat large and small shippers alike.

I think the Motor Carrier Act of 1980 was an excellent piece of legislation. I supported it at that time, and I still support it. It balances the needs of competition with those of the public interest. It maintained the essential provisions of the previous legislation such

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[1] The attachments were retained in the Committee files.

as protecting people from destructive competition, prevented unjust discrimination, and it retained rate regulation, and although loosened some standards for entry to the motor carrier industry.

My own feeling is that the real problem that lies with us today is in the administration of the act. The Commission took upon itself to allow essentially unlimited entry, even to the point where the courts overturned some of their entry decisions. Today, the fit, willing, and able test really is not being well enforced, and I think it may have some problems for safety as well as for other parts of the industry.

Truckload carriers have proliferated, but if you really look at the less-than-truckload industry, they have gone down from about 1,500 to 1,200 carriers, and concentration is continuing in that part of the industry.

Looking at it from the shipping point of view, as you look at the tariffs you find various discounts for different shippers of the same commodities with essentially the same traffic characteristics. There is a lack of price information in the field. There are secret rates being published for individual shippers that are in that tariffs merely by shipper code, and you really cannot even identify who that particular shipper is.

Today, there are no contract carrier tariffs, and it would be very easy to set yourself up as a contract carrier and really be operating as a common carrier without regulation.

Rates today can be changed overnight. They can be decreased in 24 hours with only 7 working days for increases. I believe that adds instability to the industry. Certainly the carriers cannot very well protest because if they did they might lose the business to a competitor. The rate bureaus are not allowed to protest, and of course, shippers are not going to protest if they can get the same discount.

Contrary to other information that has come here today, I believe the rate bureaus are valuable, and I think they are the only real source of information we have in the marketplace today, even though they are being widely discounted. At least it gives a standard to the small shipper from where to look.

Now, as I was conducting my paper, I decided to try to see what was going on in Missouri. So I conducted a survey of small shippers, between 10 and 100 employees. Now, the small shipper survey did show that there were varying discounts in the field, even amongst the small shippers, a range from 20 to 40 percent. There was extreme confusion about price levels. They really did not know whether they were getting as good a deal as their competitor, a worse deal, and they really did not have a very good way of finding out.

There was a general belief that the larger shippers in the same industry were doing better and that they really did not know what was happening out there. The only source of rate information again to the rate auditors and to the people out there were the rate bureaus.

I really think as you look at the congressional intent and the 1980 act that was passed, I believe the Interstate Commerce Commission has administered that act without really regard to the intent of Congress. I think the ICC should be more than a paper-shuffling agency. I really believe they ought to set standards for

rates, they ought to set standards for the rate bureaus, too, and they really ought to be doing their job rather than going to the extremes of the law and not following the general intent of the 1980 Motor Carrier Act.

I would also say that I believe the 1980 Motor Carrier Act should remain, and I do not believe there should be further deregulation at this time. While I did not make a statement about intrastate freight, I must say that uniformity there I think is a very important aspect of regulation, and we should be allowing—all the States should have similar regulations to what you have in interstate.

Thank you.

[The statement follows:]

STATEMENT OF STANLEY HILLE

My name is Stanley J. Hille, and I reside at 2713 Surfside Court, Columbia, Missouri, 65203. I am Dean of the College of Business and Public Administration at the University of Missouri–Columbia. The positions which are stated in this paper are my own and in no way reflect any official position of the University of Missouri-Columbia. Twenty years of transportation education, research and academic administration provide the background for my interest and expertise on the subject being discussed here today.

More specifically, I was Dean of Kent State University's Graduate School of Management and College of Business Administration from 1978 to 1981. Prior to joining Kent State, I spent four years with an endowed chair in transportation at the University of Alabama and nine years at the University of Maryland at College Park. At Maryland, I advanced from assistant professor to professor and chairman of the Division of Transportation, Business and Public Policy of the College of Business and Management.

Not only have I written some fifty articles, seven monographs and a book, but my daily contact with industry as a business educator and academic manager has given me a broad perspective and interest in this vital national asset, our motor carrier industry. Most recently I testified before the Motor Carrier Ratemaking Study Commission.

The motor carrier industry has grown and matured since World War II. It grew under the umbrella of the 1935 Motor Carrier Act into a healthy and viable industry. While this Act had many deficiencies with regard to modern transportation, it allowed the growth of specialization—to the point where one cannot examine trucking as one industry today. In common carriage at least two distinct subgroups have emerged, Truckload (TL) Motor Carriers and Less-than-Truckload (LTL) Motors Carriers. Each of these has different economic characteristics.

The TL sub-industry has low barriers to entry and requires little capital investment in terminals and expert management staff. It therefore shows little economies of scale.

The LTL (Regular Route Common Carriers of General Commodities) are much more complex. There are long-haul carriers of which there are relatively few. Long-haul carriers operate by picking up goods from a number of communities, bring them to terminals for assembly, carry goods over a long-haul route into other regions of the country to other break-bulk terminals and then after further line haul, dissassemble the goods at terminals in the final city destination. These carriers use the very largest of the over-the-road equipment, which must be efficiently loaded.

Another group of LTL carriers are regional in nature. Typically, they assemble goods in an area, provide origin terminal service, over-the-road movement, destination platform service, and then deliver on an overnight basis within a 500-mile radius. In this way the goods are brought back into the market the next day.

Small shipment handling requires a fleet of pick-up and delivery vehicles, terminals (both local and break bulk), and careful scheduling of over-the-road vehicles to meet demands of shippers for a high level of service. Capital investment is quite high. In addition, a sophisticated management team that has expertise in marketing and pricing, operations management, information management, as well as the personnel and maintenance functions, must be in place. Fixed costs are higher and allocation of joint and common costs provide problems in the pricing of service.

This latter group of carriers will be the focus of my discussion here today, for this is the group of carriers that has characteristics of a public utility and consequently

requires on-going regulation to protect the shipping public as well as preserve financial viability in the industry. In the course of this testimony I will present discussion of the changed environment for these carriers under the Motor Carrier Act of 1980, with emphasis on productivity, financial health of the industry, pricing and entry.

CHANGED ENVIRONMENT UNDER THE MOTOR CARRIER ACT OF 1980

The current business climate has changed dramatically since 1980. We have become truly involved in the international arena. During the recession in 1981–82, we became intensely aware that U.S. industry is no longer a world leader in productivity. This deficiency was exacerbated by unfair trade practices of some of our international trading partners.

While our economy has made a dramatic recovery, U.S. manufacturing has not achieved its former position of strength, and consequently, has not fully shared in this rebirth of the American Economy. A major part of the growth that has been achieved derived from small business. Entrepreneurship is flourishing today as it has never done before. It is therefore important that small firms explore their markets through exports if we are to regain our position of leadership in international commerce. As a member of the Missouri District Export Council, I am certain that small businesses are not as yet fully involved in exporting as they might be.

Small businesses rely heavily on LTL common carriage for their transportation needs. Thus, it is important that LTL common carriage be healthy and productive if small businesses are to continue to flourish and if they are to fully participate in both the domestic and international marketplaces. This motor carrier infrastructure in our economy provides a vital link to their productivity.

The 1980 Motor Carrier Act is good legislation. It has modernized regulations and provides a vehicle for the motor carrier industry to become more productive and better serve the shipping public. Unfortunately, implementation of the Act by the ICC has been questionable. Motor carrier viability is threatened and there is a question as to whether small shippers are being well served by ICC's continued misinterpretation of congressional intent with regard to the 1980 Motor Carrier Act.

Please allow me to briefly restate the transportation policy as found in the Carrier Act of 1980.

"With respect to transportation of property by Motor Carriers, it is the Policy of the United States Government to Promote Competitiveness and Efficient Transportation Services in order to: "Meet the Needs of Shippers, Receivers and Consumers; Allow a variety of Quality and Price Options for the Shipping Public; Allow the Most Productive Use of Equipment and Energy Resources; Enable Carriers to Earn Adequate Profits and Attract Capital; Provide and Maintain Service to Small Communities and Small Shippers; Improve and Maintain Competitive, Privately-Owned Motor Carrier System; Promote Greater Participation by Minorities in the Motor Carrier System; and Promote Intermodal Transportation."

These intertwined goals of the Act are laudable and need to be fully implemented. It should be noted that this policy supplements the 1940 Policy statement on transportation and does not destroy the intent of this previous legislation. Thus, undue discrimination among commodities, places and persons is still prohibited. Destructive competition in the industry is also forbidden. Since the ICC has the responsibility to prevent undue discrimination, motor common carrier services and prices are not subject to anti-monopoly laws. Further, the Robinson-Patman Act, which prevents volume-based price discrimination not based on costs, is applicable only to manufacturing with no mention of monopoly practices with regard to services.

COMPETITION

One of the goals of the 1980 Act is to increase competition and thereby assist motor carrier productivity. Competition in the industry has certainly increased since the passage of the Act. By 1983, there were more than 25,000 motor carriers, an increase of 43 percent since the enactment of the 1980 Motor Carrier Act. Over 10,000 new entrants were allowed into the business. Most of these new carriers were in the TL end of the business with an actual decline in the number of carriers in LTL common carriage from about 1,500 to 1,200. The increased number of truckload carriers has contributed to the decline of LTL carriers for LTL carriers used TL freight to fill in loads on the front-haul and it provided them with back-haul freight. Because of the nature of LTL shipments, trailers often cube-out before weight limits are reached. Heavy bottom loading TL shipments were historically used to reach legal weight limits, thereby increasing the revenue per load without substantially adding to the costs. Back-haul freight is essential to assure that trucks are not re-

turning to the home terminal empty. The revenue from back-haul TL shipments helps to defray the round trip costs. The dramatic increase in TL carriers has driven down the prices for this freight to a level where it is uneconomic for LTL carriers to compete. Over-capacity in this segment of the business has thus driven up costs per unit of freight and thereby forced many general commodity common carriers out of business.

This destructive competition did not need to happen. The ICC took upon itself to grant any and all applications for operating authority without the "fit, willing and able" financial tests for new carrier entry into the business. Authorities were granted on a broader (sometimes national) basis than was requested by the carriers. Even in the face of adverse court decisions with regard to this practice, the ICC continues its lack of standards for entry. Certainly this practice was never envisioned by Congress. ICC misinterpretation of the Act has greatly contributed to this problem of destructive competition.

FINANCIAL CONDITION OF INDUSTRY

Bankruptcies continue at the highest rate in history for motor common carriers of general freight. Even many of the very largest of these common carriers are in trouble. For example, Ryder/PIE is offering an ESOP plan to their employees in an effort to stay solvent.

In 1984, LTL Motor Carrier return on equity was 10.0 percent. It is clear that this low rate of return cannot attract enough capital to replace capacity in the industry. Equipment is aging and service problems will likely soon appear. The fallout to the industry has been tremendous for over 250 carriers now bankrupt. No doubt, more carriers would be in bankruptcy were it not for ERISA and the penalties it places on firms withdrawing from multiemployer pension plans.

CONCENTRATION

Concentration in the industry is increasing. It looks as if a small number of very large LTL carriers of relatively low profitability will remain. There may also remain a group of regional carriers who are also marginally profitable. Entry into this segement of trucking has been almost nonexistent. Those that have tried (such as Leaseway) have again withdrawn due to a lack of profitability.

PRODUCTIVITY

Productivity for common carriers of general commodities has not increased after the passage of the MCA. Professor Ralph L. Nelson of Queens College found in his studies that productivity in industry has been essentially flat; this is in spite of the introduction of larger and more efficient equipment.

PRICING

Rate Bureaus have traditionally served the shipping public and carriers alike by providing cost and rate information. Publication of tariffs continues to be an important function to smaller shippers and carriers. Many carriers publish some of their own tariffs but still use rate bureaus for classification of freight. The basic class rate scales of rates provide the only pricing structures to small communities throughout the United States. These bureaus are protected from antitrust regulation for the publication of joint-line rates, for general rate increases, and for certain other actions. They also have antitrust immunity for the publication of accessorial charges. This service is still of great importance to motor common carriers of general freight.

The Motor Carrier Act of 1980 asked for a review of Rate Bureau activities. Congress has wisely allowed rate bureaus to continue functioning in the public arena by not enacting any new legislation.

The MCA called for continued publication of rates with thirty-day notices for changes to provide stability to transportation. Under exceptional circumstances contract carriers were to be allowed not to publish rates. By administrative fiat the ICC has exempted the publication of all contract rates from regulation (while allowing contract carriers industry-wide authority). The Commission now permits individual motor common carriers to change rates on one day's notice for decreases and seven working days' notice for increases. Moreover, the Commission also allows tariff publication of rates for individually named shippers. The Commission also permits the carriers to publish rates in tariffs that apply only for a specific shipper identified not by name, but merely by a secret shipper code number, a number that is known only to the offering carrier. The Commission, by granting a blanket exemption for contract carriage tariff filings, permits such rates to remain secret. The result has

been a plethora of changing rates with little knowledge by the shipping public about competition.

The MCA calls for price-service options. But, in fact, it is an industry of volume discounts with the biggest shippers with the most economic muscle getting the largest discounts. Remember, Robinson-Patman doesn't apply to transportation, so if the ICC abdicates its responsibility, no one remains to protect small businesses. These price discounts to large shippers are of concern to individual states; enough so, that the State of Ohio has solicited comments on price discounting and Arkansas briefly banned discounting altogether. The ICC has refused to develop standards for rate discounting—a procedure necessary if rates are to be regulated as called for by the MCA. In an attempt to discover the impact of MCA on small shippers in Missouri, a telephone survey was conducted in August, 1985.

SURVEY OF SMALL MISSOURI SHIPPERS

A telephone survey of thirty (30) small shippers in Missouri was conducted to determine what impact, if any, there was on these shippers as a result of the 1980 Motor Carrier Act. These shippers employed from 10 to 200 employees. Cities represented in this survey were Cape Girardeau, Columbia, Crystal City, Hermann, Jackson, Kansas City, St. Joseph, St. Louis and Springfield. The questions asked of these shippers were designed to ascertain the nature of their business, their LTL shipping practices, their use of motor common carriers, the extent to which their ability to negotiate rates affects their level of rates, the extent of their knowledge of available rates, their knowledge of competitors' rates, their rate discounts, if any, they are receiving, and the perception of changes in rate levels 1985 vs. 1980.

When asked how they determined their rates, these small shippers showed a remarkable lack of sophistication in finding the best price. Only five maintained a limited tariff file. Twenty-one indicated that they depended upon the carrier representatives or called various carriers in their area for rate quotes. Only three shippers used rate auditors or other outside services for verification of their shipping prices. When asked how they could be certain they were getting the best rates, twenty shippers indicated they comparison shopped, i.e., they either talked with other shipper traffic managers or called a few carriers. Only four indicated they used rate auditors for verification. The remaining five shippers were unable to explain how they determined the best rates. Except for the rate bureaus' tariffs, there was no evidence of any convenient or reliable source from which these shippers could determine rates.

The range of discounts varied widely—from 6 percent to 40 percent—with about half of the shippers getting discounts of 20 percent or more and the other half receiving discounts of less than 20 percent. Thus, even among this rather small group of shippers, the discounts enjoyed by some were substantially greater than the discounts enjoyed by others.

A corollary question was asked about whether they believed competitors were getting better rates. Only about one in four believed they did as well as the competition. Clearly the small shippers interviewed were not well informed about the transportation rate environment in their industries.

From this survey of a limited group of medium to small sized Missouri shippers, I found that although all of them were aware of MCA 80, they generally did not know whether or not their competitors were enjoying a larger discount. The apparent reason for this problem is that they either did not, or could not, maintain a file of the many individual carrier tariffs that would be required in order to search for the lowest available rate. Instead, most respondents deal with only a very few carriers, and negotiated discounts with one or more of them. Ninety percent of the shippers surveyed used ten or fewer motor carriers; slightly less than half used five or fewer motor carriers.

It is evident that even though these shippers receive some amount of discount from their carriers, they no longer know whether their net freight charges (base rate less discount) are greater or less than what their competitors pay for the same size shipment over comparable distances.

Prior to the 1980 MCA, shippers could readily determine the lowest rate by simply referring to the tariffs of a rate bureau and those of a handful of individual carriers. One can no longer search tariffs effectively, because the ICC policies neither the level of rates nor the manner of tariff publication. This policy is contrary to the 1980 MCA for Congress made no changes in the law with the respect to destructively competitive-rates, discriminatory rates, or preferential and prejudicial rates.

Poor rate information has obviously created confusion for thousands of shippers across the country like those Missouri shippers interviewed. Larger shippers undoubtedly have an advantage, for they have sophisticated traffic departments with computers, cost models, heavy traffic volumes and able negotiating teams. This ability gives the larger LTL shippers a decided competitive advantage over their smaller brethren.

CONCLUSION

The Motor Carrier Act of 1980 is a good piece of legislation. It combines the principles of competition with protection of the broader public interest in a sound motor carrier industry and an informed shipping public. Unfortunately, the implementation of this act has not properly balanced these needs.

Entry into the industry has been virtually unlimited. The fit, willing and able test of the Act has not been applied to entry. Quick and easy entry into the field by TL carriers has resulted in over-capacity to the point LTL carriers cannot participate in TL traffic to fill loads or find back-hauls. Unit cost of hauling LTL freight has therefore risen rapidly. Rates have had to rise at a pace greater than what they otherwise would have, but for the rapid increase in costs, caused by the loss of the TL shipments.

Pricing was to continue under regulation, and the ICC was to let price-service options develop. Instead, the ICC has abdicated its price control to a point where price discounting is the primary method of doing business. Since the Commission has failed to develop standards for price discounts, large shippers are getting the largest discounts. No one knows if these 50 percent discounts are in any way cost justified. But it takes only common sense to believe that a carrier with an operating ratio of 95 percent or higher probably is not recovering its variable costs when it transports LTL shipments at rates that are discounted 20 percent and higher.

The Commission refuses to police such discounts on its own, arguing that anyone aggrieved by a large discount should file a formal complaint. Such a policy is clearly not in the public interest. First, the law no longer permits rate bureaus to protest, complain or otherwise petition against destructively competitive or discriminatory rates. Second, as a practical matter, no carrier will file a complaint against another carrier's discount tariff because of obvious shipper retribution. Even if the carrier were willing to risk loss of business, the Commission's acknowledged refusal to exercise its suspension power shifts the statutory burden of proof from the party who published a destructively competitive discount to the party filing the complaint.

The Commission's administrative change in the statutory notice period for filing tariffs, from 30 days' notice to one day's notice, effectively precluded *any* party from filing a petition for suspension that could even be considered by the Commission. In contrast, if the ICC held suspension proceedings, the statutory burden of proof would be on the party that changed the rate, i.e., the party with all the facts. With respect to discriminatory rates, the previously mentioned Commission policies (secret rates) also effectively precludes a shipper from ever learning if he is being discriminated against.

If it weren't for the continuation of rate bureaus, almost no price information would be available to the shipping public since many of these large discounts are named in contracts not publicly filed, or are published in tariffs only by shipper numbers that are available solely to the carriers themselves. These large shippers with monopsony power have forced LTL rates down to a level of uneconomic rates for many carriers. The Missouri small shipper survey showed that they were confused about price levels and have difficulty keeping track of rapidly changing rates.

Destructive competition abounds. An over-capacity coupled with large discounts to powerful shippers have driven down the profitability of carriers to a point where rates of return in the industry are inadequate to attract new capital and carrier bankruptcies are at the highest level in history. These poor rates of return for carriers mean that they are unable to buy new, larger, and more productive equipment. A study has shown that there has been virtually no increase in productivity for LTL motor carriers since the passage of the 1980 Motor Carrier Act. Thus, that goal of the act is frustrated. Big truck safety may also deteriorate as a result of aging equipment.

It seems to me that continued oversight of the act is necessary if the goals of the 1980 MCA are to be fulfilled. There should not be any further deregulation legislation. Rate bureaus have performed admirably in their more restrictive environment, and they continue to be an essential component of a sound and efficient transportation system. The 1980 MCA should be permitted to work as it was intended. Howev-

er, the only way for that to happen is for the Congress to admonish the ICC to regulate destructive competition and rate discrimination as required by the statute.

It is my hope that you will require the Commission to implement the act in a manner consistent with its goals. It is the proper role of government to act as referee in business to insure that the marketplace is working properly—even in an Adam Smith oriented economy. It is therefore imperative that the referee be unbiased—properly balancing the goals of public interest and private benefit. I thank you for allowing me to testify before this Committee. It is truly a great honor to appear before this distinguished body.

Senator PACKWOOD. Thank you, Doctor. Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman and Senator Danforth.

I am sorry that you did not receive our statement, and I hope that you do have a chance to review it.

My name is Frank Taylor, and in spite of what it says on the witness schedule, I am a practicing attorney in Kansas City, MO, not located somewhere in downtown Washington, DC.

I am here as president of the Transportation Lawyers Association, which is a group of around 600 motor carrier lawyers, rail lawyers, air lawyers, located in the United States and Canada. I also have with me Mark Andrews, who is chairman of the legislative committee of the association.

The TLA position is succinctly set forth in our statement, and I hope that you will have the time and opportunity to read it. Our position is very simple in that we are requesting that the committee and Congress require that the Commission enforce and administer the present act as it was intended. In our statement we pointed out several areas of concern. They have already been discussed in detail this morning.

First is the financial condition of the trucking industry. We are talking about the large and the small, and the financial condition certainly impacts the other problems we have. Another problem that we have discussed in our paper are the safety trends. Obviously if a motor carrier does not have the financial ability to comply with the safety standards, it will not be done.

The third is the insurance crisis that we discussed in some detail. In our office I know we are spending more and more time dealing with this one element. You have smaller carriers that are being either forced out of the market, the insurance market, by not being able to get bidders, or that they have to take policies that have premiums of 200 and 250 percent increases which severely impacts their ability to continue operation.

The last item that we discussed in our paper was the rate discounting. As Dr. Hille just pointed out, that is becoming a factor.

All of these factors tend to generate from the same origin, and that is that the Commission is ignoring or not enforcing the existing law. There has been a lot of philosophical comments here this morning about shippers and carriers, and out in the field we do experience problems with shippers as well as carriers. Our firm not only represents motor carriers and airlines, but we also represent shippers, and there are many shippers in Missouri who are not able to obtain a decent transportation service in interstate commerce because they are located in a small location, their traffic mix does not fit in with what a carrier economically can go pick up, and as a result, many times some of these shippers—and some

of them are not too far away from Kansas City—have to bring their traffic to Kansas City by their own vehicle.

On the other side, we are experiencing more and more the situation of where perhaps in 1981–82, and perhaps even as recently as early this year, our firm has incorporated a motor carrier composed of one or two people. They had formerly perhaps been owner-operators. They apply for authority, and of course, it is granted without question as to financial fitness or safety of facility or expertise, and these carriers operate for 2 or 3 months on minimal cash, and at the end of 4 or 5 months, the second six-month insurance premium is due, they maybe had a major overhaul in one of their units, maybe they only have two or three units, and as a result, they are in a cash crunch that leads them to do one of two things: One would be terminate operations or not pay some of their bills such as insurance, and go ahead and operate.

We are finding more and more of this to be a problem.

The TLA is not advocating further deregulation since what we presently have is almost worse than deregulation. What the TLA is requesting and advocating is a commonsense approach to the problem, confronting the motor carrier industry, and enforcement by the Commission of the exising law.

Thank you, Mr. Chairman, and if you have any questions, why, we will be glad to answer them.

[The statement follows:]

STATEMENT OF FRANK W. TAYLOR, JR., PRESIDENT, TRANSPORTATION LAWYERS ASSOCIATION

My name is Frank W. Taylor, Jr. I am a partner in the Kansas City, Missouri law firm of Dysart, Taylor, Penner & Lay, P.C. I have practiced law for 27 years, and a substantial portion of my practice throughout that time has involved motor carriers.

The Transportation Lawyers Association (TLA), of which I am currently the president, is a specialized bar association founded in 1937 as the Motor Carrier Lawyer Association. Today, TLA's members represent carriers of all modes on the full gamut of legal matters, ranging from regulatory compliance to labor law, securities law, mergers and acquisitions, accident cases, collection matters and general corporate work. Only about 10 percent of our members practice in Washington, D.C.; the rest reside and practice law throughout the United States and Canada.

Because of our membership's day-to-day, hands-on involvement with the trucking industry, we think we have a certain degree of insight into the real-world problems facing that industry today. Our members and their clients grapple every day with issues such as the insurance crisis, the ERISA pension liability problem, the rampant overcapacity, the below-cost rate dicounting, and the resulting financial weakness of today's trucking industry. We see disturbing trends including a decline in the number of owner-operators, and increase in the average age of the nationwide truck fleet, and incipient increase in accident rates, and a truly alarming proliferation in the number of carriers being cited for lack of insurance.

To those of us who have this real-world perspective, the notion that one of the problems facing the trucking industry is continued regulation or "over-regulation" by the Interstate Commerce Commission (ICC) seems almost ludicrous. Yet, we keep hearing that some in Washington, and in the executive suites of certain large corporate shippers elsewhere, are once again planning a major push to eliminate supposed ICC over-regulation of the trucking industry. Some, indeed, are calling for an end to ICC trucking regulation as a precondition for addressing other problems facing the industry.[1] It appears, therefore, that an inordinate amount of the limited time remaining in this Congressional session may, once again, be consumed by debate about ICC deregulation rather than about the kinds of relief that the trucking industry really needs.

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[1] "ATA, Private Truck Council At Odds . . . ," Daily Traffic World, August 30, 1985, at 2.

From TLA's standpoint, there is no such thing as rampant ICC over-regulation of the trucking industry today. To the contrary — as we have stated previously before this Committee—the problem is the ICC's underutilization of the regulatory tools deliberately left in its hands by Congress by passing the Motor Carrier Act of 1980 (MCA). Our past statements to this Committee have focused on the confusion and uncertainty created in the trucking industry by the yawning gap between Congressional intent in enacting the MCA, one one hand, and ICC "enforcement" policies on the other. We have focused as well on the ethical problems this gap between theory and practice creates for lawyers attempting to councel clients who know that laws are not being enforced. The uncertainty, the ethical problems and the resulting further erosion of respect for laws and legal institutions—all of these remain problems today. In addition, however, the ICC's failure to use its remaining regulatory powers in the public interest is now making an increasingly visible contribution, in our view, to the problems besetting the trucking industry outside the ICC regulatory arena.

We are advised that other witnesses today will describe, in statistical detail, the real-world problems facing the industry. For ready reference, however, we will outline here some of the data that is now beginning to emerge.

INDUSTRY FINANCIAL CONDITION

At previous oversight hearings, the ICC and others have trumpeted an apparent slight improvement in motor carrier operating and financial results for 1983 compared to 1982.[2] It is now apparent, however, that those figures were a temporary aberration in a downward trend that has continued since the beginning of de facto ICC deregulation in 1977 or 1978. Testimony being presented today by the Regular Common Carrier Conference (RCCC), whose members provide most of the available common-carrier service on small shipments of general freight, documents this decline and deomonstrates that RCCC members carried less tonnage in the first quarter of 1985 than in any corresponding period since the current statistical series began in 1967. The ICC's own data for the 100 largest motor common carriers show a similar decline in earnings and traffic volume.[3] outside financial analysts have confirmed that this deterioration in the performance of the general freight sector in 1984, relative to 1983, more than offset any gains by specialized truckers during that period; [4] and, indeed, the erosion of profitability appeared to spread into the specialized sector in the latter half of 1984.[5]

Along with this deteriorating financial performance has come increased concentration of revenues and profits—just as has been reported in other recently deregulated industries such as aviation.[6] According to a senior transportation analyst for prominent investment banking firm, the nation's ten largest general freight carriers, excluding United Parcel Service, increased their share of the less-than-truckload (LTL) market to 30 percent of revenues and 42 percent of operating profits over the last ten years.[7] Indeed, if two money-losers are excluded from the top ten carriers, the remining eight would generate more than half of the LTL sector's profits according to the same analyst,[8] who thus corroborates the market concentration data which RCCC will present in its own testimony today. Interestingly, the only known new entrant into the long distance LTL market since 1980—Leaseway—discontinued LTL operations early in 1985.[9]

Throughout the trucking industry, large numbers of carriers are going out of business, and the problem of the disappearing or absconding carrier is becoming increasingly serious. We are informed that the transportation audit division of the federal government's General Services Administration has assigned one of its staff attorneys to work fulltime on the task of recouping overcharges to the government from bankrupt and disappeared carriers.

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[2] See, e.g., oversight testimony of ICC Chairman Taylor before this Committee, Sept. 21, 1983, at 2, 8–9.

[3] "Despite Higher Revenues, Truck Earnings, Traffic Declined in First Quarter," Daily Traffic World, Aug. 27, 1985, at 1–2.

[4] "Profitability Drops in Trucking Industry," The Journal of Commerce, July 1, 1985, at 6A.

[5] Ibid. (col. 5).

[6] "Air Industry Dominated By Handful of Carriers, Publication Maintains," Daily Traffic World, Apr. 15, 1985.

[7] "LTL Concentration," Transport Topics, Aug. 19, 1985, at 8.

[8] Ibid.

[9] "Leaseway Transfers LTL Assets," The Journal of Commerce, Feb. 25, 1985, at 1A, 5A.

SAFETY TRENDS

In each of its MCA oversight hearings, this Committee has heard claims from the ICC and the Department of Transportation (DOT) that deregulation has had no negative effect on truck safety; DOT in fact has claimed repeatedly that reported accident rates are going down. Now, however, there is emerging evidence that DOT's figures do not fully reflect real-world trends, but rather reflects sifnificant underreporting of accidents to its woefully understaffed Bureau of Motor Carrier Safety. In fact, state data is begining to show an upward trend.

In California, which last year held comprehensive hearings on the public-interest impacts of interstate and intrastate deregulation, the uncontroverted testimony of a California Highway Patrol official showed an 18 percent increase in truck-caused accidents in that state during 1983, whereas the total California miles operated by trucks during that year increased only 5 percent.[10] According to data collected by Virginia authorities, hazardous waste incidents ivolving all modes in that state increased by almost 28 percent from 1983 to 1984, even though incidents reported to federal authorities showed a slight decline during that same period.[11]

At the same time, the average age of the total truck fleet in the United States reportedly has increased to 7.4 years—the highest recorded in a quarter of a century—and registered trucks over 15 years old rose from 10 to 14 percent of all trucks registered during the year ending June 30, 1984.[12] In California, the previously-cited hearings produced uncontroverted testimony that the average age of for-hire carriers' trucks in that state rose from 7.4 years in 1979 to 9.0 years in 1983.[13] Even more disturbingly, the California data showed a decline in maintenance expenditures on this aging fleet from $61.5 million in 1981 to $46.0 million in 1983.[14] The logical inference is that financially strapped motor carriers are cutting back on purchases of new equipment and maintenance of existing equipment.

THE INSURANCE CRISIS

The deteriorating financial performance of motor carriers could not come at a worse time in view of the skyrocketing insurance premiums now facing the trucking industry. As the American Trucking Associations, Inc. have pointed out in a request for an ICC investigation into this matter, carriers frequently are being faced with premium increases of 300 to 400 percent—assuming they can find an insurance company that will still write a truck policy. Although it may well be that this insurance crisis stems in large part from problems internal to the insurance industry, such as declining investment income,[15] insurers also have complained that writing truck policies has become more difficult with reduction of ICC reporting requirements.[16]

Moreover, whatever the cause of the crisis, it is apparent that large and growing numbers of motor carriers are traveling this nation's roads without adequate, legally-required insurance coverage. Only recently, the ICC finally recognized a trend reported by TLA to this committee in prior years[17]—the alarming increase in the number of ICC enforcement cases against motor carriers deemed out of compliance with the agency's insurance and process-agent filing requirements. An ICC commissioner recently has asked the agency's enforcement arm to try to determine why 12,000 insurances warning letters have been going out to carriers each year since the early 1980's (the projected number of warning letters for 1985 is 16,000).[18] Be-

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[10] California Public Utilities Commission, Docket Nos. OII 84-05-048 et al., "Investigation on the Commission's Own Motion Into the Present System of Transportation Regulation . . . " (hereafter, "Cal. PUC Case"), Testimony of Chief E.E. Kynaston, California Highway Patrol (Exhibits 31, 31A), at 3-4. California intrastate trucking had undergone substantial administrative deregulation in the years preceding those hearings. The cited proceedings are still pending before the California Public Utilities Comission.

[11] "Inspection of Waste Carriers Assailed. "Washington Post, Aug. 14, 1985, at B1, B7.

[12] "Median Truck Age Up to 7.4 Years," The Journal of Commerce, April 25, 1985, at 6A.

[13] *Cal. PUC Case*, Exh. 18, p. 10.

[14] Id., Exh. 18, Table V.

[15] "Insurers Warn Carriers High Premiums to Persist," The Journal of Commerce, May 23, 1985, at 1A, 6A.

[16] "Underwriters Frustrated by Trucking Deregulation," The Journal of Commerce, Feb. 11, 1985, at 8A, 12A.

[17] Because 1984 oversight hearings were truncated, TLA submitted a letter to the full Committee's chairman dated Sept. 26, 1984, in lieu of testimony. See letter at 3 for statistics on ICC revocation actions in 1984.

[18] "ICC to Probe Increase in Insurance Warnings," Daily Traffic World, Aug. 12, 1985, at 6.

cause warning letters are only the first step in a lengthy process during which the ICC gives carriers an opportunity to show they have corrected their insurance deficiencies, there is the potential for highway operations by thousands of uninsured carriers while this process plays itself out.

In many instances, the insurance enforcement process ends with ICC action to revoke the carrier's operating authority. The ICC Registers published in randomly selected weeks during January and August 1985, show between 77 and 226 motor carrier "revocation actions" by the agency per week. Averaged and annualized, these figures suggest that as many as 7,800 carriers per year now face revocation of authority by the ICC. Overwhelmingly, the carriers facing such revocation have high "MC" numbers, suggesting that they have entered the industry during the recent deregulated era.

RATE DISCOUNTING

The fact that deteriorating financial performance in the trucking industry results largely from rate discounting is now recognized not only by the industry itself but by outside analysts as well.[19] As we have reported at prior oversight hearings, the ICC has continually refused to establish any regulatory guidelines setting even a bottom limit for such discounting. There has been no change in the ICC's positon on truck discounting during the past year. Indeed, a new dimension to the discounting problem has now emerged, to wit, the "unpublished discount." It is becoming apparent that numerous motor common carriers, no bankrupt or out of business, have been offering shippers discount rates, without, however, bothering to publish the discounts in ICC tariffs as required by law. As a rsult, receivers or auditors for these defunct carriers are now billing shippers for millions of dollars representing the difference between the unpublished discounts and the lawful tariff rates.[20] Although the ICC has granted shipper-group requests for an investigation into this problem,[21] no meaningful action has been taken by the agency to date.

The foregoing problems continue to plague the industry and the public despite the fact that five years have passed since enactment of the MCA. While some dislocations were perhaps to be expected during the first year or two after enactment of this legislation, surely any net benefits to the industry and the public would be visible by now—almost three years into an economic recovery. Although it is claimed that shippers have saved billions in transportation costs as a result of current deregulatory policies—and we do not doubt that large shippers have indeed benefited handsomely from the current regulatory climate—the question must be asked whether such savings represent a net gain to society in view of the resulting destabilization of an industry on which we all depend—and with which we all must share the roads.

In our observation, the ICC's responses to these problems have amounted to little more than fiddling while Rome burns. This is not because there is no meaningful role that the ICC could or should play in these issues, but rather because the agency's "free market" fixation leads it to avoid, wherever possible, using the powers it has.

For example, the ICC could utilize its still-extent investigation and suspension powers to impose flexible, pragmatic but meaningful limits on rate discounting. Instead, it has not only refused to address the issue, as noted previously; in addition, it has proposed to gut the motor carrier financial auditing and reporting system which might enable the ICC and the public to determine whether carrier rates are meeting carrier costs.[22]

The ICC could reactivate its past practice of making meaningful inquiries into the fitness and ability of motor carrier applicants to conduct safe operations. Instead of being satisfied with a mere formalistic statement by the applicant of its familiarity with safety regulations,[23] the Commission could, if it chose, inquire as to whether the carrier has, or is likely to obtain, the financial wherewithal to maintain and, as needed, modernize its trucking fleet. Instead of leaving it to a single, concerned Commissioner to make informal inquiries about the proliferation of insurance warn-

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[19] *See, e.g.*, "A Year End Review: Trucking: Roadblocks to Uniformity," Traffic World, Jan. 21, 1985, at 106.

[20] "Unpublished Truck Rates Yield Balance-Due Bills," The Journal of Commerce, May 13, 1985, at 1A, 7A.

[21] Docket No. MC-C-10942, instituted May 16, 1985.

[22] See e.g., Docket No. 38904, which we understand is discusseed at greater length in testimony being presented today by RCCC.

[23] See 49 CFR § 1160.6.

ing letters, the Commission itself could, if it chose, conduct a formal investigation into the root causes of this problem.

The Commission and DOT could, at least, take steps to implement Section 215 of the Motor Carrier Safety Act of 1984, Pub. L. 98-554, which requires those agencies jointly to establish, within a year, strengthened procedures for scrutinizing the safety fitness of motor carrier applicants before the ICC. Instead, neither agency has issued so much as a notice of proposed rulemaking to implement Section 215, even though the allotted year for this process expires October 30, 1985. The ICC's laxity in the safety fitness area shortly will be explored in detail at hearings to be held September 12, 1985, by a subcommittee of the House Government Operations Committee.

In other areas, as well, the ICC has displayed an unwillingness or an inability to use its retained powers constructively. The Commission's inability to arrive at a reasoned majority position on reconsidering its revised credit regulations has been widely reported,[24] as have been the Commission's delays (despite shipper and industry complaints) in deciding remanded maximum rate investigations,[25] deciding remanded freight-classification issues,[26] approving revised agreements for motor carrier rate bureaus,[27] and even addressing the question of the Commission's own reorganization to live within lower appropriation levles.[28]

When the ICC's own chairman publicly characterizes the motor carrier regulatory activities of his agency as mere paper shuffling, as he has in past hearings before this Committee, it is, of course, tempting to draw the conclusion that the agency's authority over motor carriers should be abolished. Obvioulsy, everyone is against paper shuffling. We would suggest, however, that the easy conclusion is the wrong one to draw in this instance. Given the real-world problems facing the trucking industry today, the Commission could, if it chose, utilize its remaining regulatory powers constructively, in an effort to resolve or at least ameliorate these problems. Five years of experience suggests, however, that the ICC will correct its course only if Congress turns aside calls for further tinkering with the MCA Itself and, instead, calls upon the ICC to enforce that Act as written.

Thank you.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. What specific Interstate Commerce Commission regulations do you believe are necessary to protect the trucking industry and shippers?

Answer. In order to protect not only the trucking industry and shippers, but also the general public which shares the roads with trucks, there is an urgent need for revitalization of those Interstate Commerce Commission ("ICC") regulatory powers which, if utilized, would promote motor carrier safety and fitness. Some of the safety-promotion measures the ICC should take are obvious; others are not so obvious and, indeed, may defy conventional deregulatory wisdom.

The obvious steps include implementation of Section 215 of the Motor Carrier Safety Act of 1984, which was intended to establish more rigorous safety fitness requirements for motor carriers seeking ICC operating authority. The Transportation Lawyers Association ("TLA") submits that the delays by both the ICC and the Department of Transportation ("DOT") in implementing Section 215 are simply inexcusable at a time when there is mounting evidence that intercity truck accident

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[24] "Three-Way Split by ICC Stalls Pleas to Reopen Carrier Credit Revision [In Ex Parte No. MC-1 et al]," Daily Traffic World, May 24, 1985, at 4.

[25] "Shippers Push Taylor for Prompt Decision on Maximum Rate Standards," Traffic World, Feb. 11, 1985, at 55 (relating to eleven general rate increase proposals remanded to the ICC by the D.C. Circuit in 1983).

[26] "NCC Asks ICC Resolution of Five-year-Old Plan to Amend Furnace Rating," Traffic World, Feb 4, 1985, at 61-62.

[27] All of the motor carrier rate bureaus were required under the MCA to submit amendments to their collective ratemaking agreements pursuant to 49 U.S.C. 10706. All did so, but the revised agreements of the major bureaus still are pending before the agency.

[28] "Chairman Taylor Cancels Vote on Reorganization; Open Conference Set," Traffic World, June 3, 1985, at 36.

rates are rising,[1] motor carrier maintenance expenditures are falling,[2] and the average age of the United States commercial truck fleet is rising.[3] Although some have suggested that ICC involvement with truck safety matters is superfluous, and that DOT can do the job alone, this is questionable in view of the shortcomings recently found by the General Accounting Office in DOT truck safety enforcement programs[4] and in view of certain due-process deficiencies in the procedures by which DOT assigns motor carrier safety ratings (see Attachment A[5] to these Responses).[6]

Other safety-related measures that the ICC could and should take are, perhaps, not so obvious. In the first place, it is becoming increasingly apparent that the current financial difficulties of the trucking industry are inseparable from truck safety issues. The oversight testimony of the for-hire segments of the trucking industry clearly shows that these segments have not yet enjoyed the economic recovery which has been experienced by most of the rest of the economy. It is difficult to resist the conclusion that the well-documented profit squeeze on for-hire truckers is directly related to reduced fleet maintenance and longer fleet replacement cycles, and that these latter trends are feeding the increased accident rates mentioned earlier. It also seems obvious that the current escalation of insurance costs from 3 percent to 7 or 8 percent of a typical carrier's revenues[7] bears a direct relationship to the escalating number of regulated motor carriers who appear to be violating ICC insurance regulations.[8]

TLA respectfully suggests that all the regulations in the world will not resolve truck safety problems unless policymakers address the financial condition of the trucking industry as well. This suggests, in turn, that the long-term best interests of the trucking industry, its shippers and the public require (1) greater ICC attention to the financial fitness of prospective motor carrier licensees and (2) reassertion of ICC control over below-cost discounting of motor carrier rates. Specifically, the Commission should require motor carrier applicants to submit some evidence that they will have cash flow (or other access to working capital) necessary to maintain their equipment, replace it as needed, fully compensate owner-operators for their costs, and meet escalating insurance premiums. In the rate area, the Commission specifically should reverse its Ex Parte MC-166 policy of total nonintervention in motor carrier rate discounting.

Wholly aside from the specific areas of safety and rate regulation discussed above, however, this Subcommittee should consider whether retention of ICC motor carrier regulation in general may not be necessary for at least two other purposes. First, the Interstate Commerce Act, as currently written, provides the ICC (and, derivatively, DOT), with extremely broad investigatory access to the business and traffic records of regulated carriers; see 49 U.S.C. § 10321(b). Because of the existence of these broad investigatory powers, in combination with other aspects of ICC regula-

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[1] See page 6 of TLA's prepared testimony for these hearings. See also Exhibit 5 attached to comments filed by the American Insurance Association with the ICC on September 26, 1985 in Ex Parte MC-178, "Petition for Investigatory Rulemaking—Motor Carrier Insurance Rates." The latest Federal Highway Administration figures apparently corroborate this trend, as noted in oral testimony by Thomas P. Donohue of American Trucking Associations, Inc. at the hearing on Sept. 27, 1985 held by this Subcommittee in connection with certain motor carrier deregulation bills.

[2] See discussion at page 5 of prepared testimony by the Transportation Lawyers Association for these hearings.

[3] See pages 5–6 of TLA's prepared testimony for these hearings.

[4] "Stronger Enforcement Would Help Improve Motor Carrier Safety" (GAO/RCED-85-64), Sept. 5, 1985.

[5] The attachments were retained in the Committee files.

[6] Attachment A reproduces certain materials recently prepared and submitted to the House Government Operations Committee's Subcommittee on Government Activities and Transportation by a TLA member who has extensive experience with DOT procedures for assignment of safety ratings. As Attachment A points out, safety ratings are assigned by DOT headquarters staff rather than by the people who do the actual inspections. Moreover, headquarters staff consistently refuses to reveal the weight it assigns to the various safety-rating factors set forth somewhat nebulously in 49 CFR Part 385. Furthermore, DOT ordinarily will not change a safety rating without doing a reinspection; this can leave a carrier in administrative limbo because DOT also has a policy of not committing to a definite time frame within which a reinspection will take place. If truck safety regulation is to be effective, it must also be perceived as fair. The ICC is equipped by background and experience to provide administrative due process guarantees that will ensure proper utilization of DOT's safety expertise.

[7] Oral remarks of Kenneth L. Pierson, Director, Bureau of Motor Carrier Safety, DOT, on Oct. 21, 1985, to Eastern Transportation Law Seminar of Association of Transportation Practitioners, held at Washington, DC.

[8] See page 7 of TLA's prepared testimony for these hearings.

tion, motor carriers probably fall within the "regulated industries" exception to recent Fourth Amendment case law requiring search warrants for administrative inspection of private business records. See, e.g., *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307 (1978); *Delaware* v. *Prouse*, 440 U.S. 648 (1979). The Subcommittee should consider whether extensive economic deregulation of motor carriers under various pending bills might not have the unintended side effect of requiring federal and state safety inspectors to obtain search warrants before examining a carrier's records. Clearly, this would impede effective enforcement of truck safety regulations even though pending deregulation bills would not directly change such regulations at all.

Similarly, the Subcommittee should consider whether the ability of shippers to defend uniform zone delivered pricing systems against challenges under the Robinson-Patman Act, 15 U.S.C. § 13, might not be compromised in the absence of the freight-rate benchmarks now provided by collectively-set bureau tariffs. This question could be of particular concern to shippers not encompassed within the safe harbor established for the grocery industry by 49 U.S.C. § 10732.

Question. What do you see as the most substantial problem now facing the trucking industry?

Answer. Largely for the reasons set forth in answer to question 1, financial instability seems to be at the root of most of the current problems facing the trucking industry. This conclusion receives substantial support a recent proposed decision and order by an administrative law judge of the California Public Utilities Commission, in a proceeding which comprehensively investigated the results of substantial administrative deregulation of trucking within that large, bellwether state. The decision finds that "destructive rate-cutting in the industry is one of the major causes of the decline of the trucking industry and that more regulation rather than less regulation is the only effective means of eliminating or reducing this practice" (Decision at 2). Attachment B to these Responses reproduces the findings of fact, conclusions of law and draft order embodied in this proposed decision; a complete copy of the proposed decision also is being supplied for the Subcommittee's information.

Senator PACKWOOD. Mr. Taylor, I do not know Missouri, and Senator Danforth is here, but I swear, I do not pick up complaints from small town merchants about inability to get shipping or about costs. Usually people do not come up to me and say, gee, things are going well. You know, they normally come up and say things are going badly, and if they are going well they do not say anything. And I am talking about towns of 300, 400, and 500 that have a grocery store, maybe a combined grocery store-hardware store, or a town of 2,000 or 3,000 that might have a drugstore and a few other things. They never complain about shipping.

Why is that?

Mr. TAYLOR. Well, Mr. Chairman, you are probably dealing with a consignee. The grocer or the hardware store——

Senator PACKWOOD. Who are receiving things, or in some cases, shipping things out.

Mr. TAYLOR. Well, we found the problem to be primarily with the shippers that are trying to compete with, say, for instance, in Versailles, MO, there is a company that is trying to compete with the same product with someone in Kansas City, and that shipper in Versailles cannot obtain, first of all, the same freight rate, and second, the same type of service as the carrier located in one of the industrial parks in Kansas City.

So they come in, what do we do? Well, first of all, you can say write your Congressman or your Senator, but they cannot wait for that. They have to compete today. So what do they do? They go to a self help doctrine, and that is either put on their own truck or stop shipping.

Mr. HILLE. May I add to that, too?

Senator PACKWOOD. Yes.

Mr. HILLE. That is a similar thing that I was finding. We were dealing with the small manufacturer, specifically looked at the small manufacturer. Typically, the retail merchant who is not vertically integrated, such a a large J.C. Penney, will be receiving his or her goods from a wholesaler who is providing the transportation, and as the receiver of the goods, they would not be ordering the transportation themselves.

Also, many of your smaller retailers today are beginning to use parcel service rather than trucking service in order to obtain their goods, but in the manufacturing area there is a great deal of uncertainty. These smaller shippers cannot afford to have a sophisticated traffic department. They do not have cost truck models where they can run a comparison like many of the larger shippers I have worked with do. So if you have a cost model, you know what the base ought to be. But these smaller people really do not have that. The only kinds of cost information they get is the average statistical studies that come out of the rate bureaus and so on.

So there really is a problem for them. They could very well even be subsidizing some of the larger shippers. We do not know. I am not making that allegation. But what I am saying is with the varying discounts out there, they are very likely paying quite a bit higher prices. If you pay a high enough price you will obviously get the service. But they really are in a position where they feel they are at a competitive disadvantage, and that is just in Missouri now. I would not want to generalize through the United States.

Senator PACKWOOD. Tim, let me ask you because you must serve some of these kinds of manufacturers in small towns, not just in Oregon, but you are operating throughout the country now.

First, how does a broker work? What do you do? A small manufacturer calls you and says I have got what?

Mr. LEE. We service a number of small manufacturers in both Oregon, Washington, and California. Being your own home State, you know of the small communities outside the Portland metropolitan base. We have found quite honestly that in those instances where we have been able to lift the deregulatory and the economic requirements, that we have found a number of carriers to move both LTL shipments and truckload shipments to and from many of these locations.

Senator PACKWOOD. Well, explain to me how your business works because there was not very much of this business prior to 1980.

Mr. LEE. No, there was not. A broker, as opposed to a conventional trucking company, can come to a shipper, small or large, and offer them a multitude of alternatives. We are not there representing truck or rail or a certain mode of operation or particular truck line, for that matter. We represent all of them, and, 9 times out of 10, we will find one or more carriers that are committed to us on a volume basis, and can pass on the savings to the shipper.

Senator PACKWOOD. Question: When you make the commitment to the small town manufacturer to ship something at a certain price, are you then obligated? You have then got to find the carrier for it, you have got to have the carrier?

Mr. LEE. We do that in the course of our business. I would not indicate that that is totally the case with all brokers.

Senator PACKWOOD. But the shipper can look to you——

Mr. LEE. Absolutely.

Senator PACKWOOD. And in essence you said $70 a ton, we will ship it for $70 a ton; you had either better find it for them or you are going to take a loss on it, but you are going to ship it anyway.

Mr. LEE. All of our rates are in written form or of a contract nature.

Senator PACKWOOD. Now, what happens when a small manufacturer—they exist by the hundreds—in Bend, OR, or Pendleton, wants to ship something? They call you up, and what do you do? Take out of Bend, which is a relatively isolated city.

Mr. LEE. Well, as an example, there is a large interstate corridor between Seattle and a lot of the small communities outside of the Willamette Valley, where a lot of these shippers in the past have been negotiating their own rates with their own carrier, we will use one or two carriers to perhaps make a run through Oregon and pick up four or five different shipments without running it through a distribution point in Portland. In other words, they will pick up directly at the manufacturer's facility, consolidate a truckload and deliver in Seattle.

Senator PACKWOOD. They will take that run straight down from The Dalles, down through Bend, down through Klamath Falls, and they just will not even use the interstate. They will be going down the main highway that runs through the center of Oregon and picking up stuff as they go that you have contracted with them to pick up.

Mr. LEE. That is correct.

Senator PACKWOOD. Senator Danforth.

The CHAIRMAN. Dean Hille, what is wrong with unlimited entry? Why would that be a problem? Why should anybody who wants to go out and buy a truck not be able to drum up all the business he can and deliver goods from one place to the next?

Mr. HILLE. Well, there are several problems. One really comes even with the security of delivering the freight, of course. If they are not of some financial stability, they are not likely to have the cargo insurance or other kinds of insurance, and as likely as not they might leave the truck somewhere along the line and the goods do not get delivered. So that is one problem.

Another structural problem——

The CHAIRMAN. Has that occurred?

Mr. HILLE. Yes. I am familiar with several cases where that has happened, and has happened to large shippers, but they have rectified, being more careful, of course, as to who they are getting it from.

Also, in the industry between the LTL carrier and the truckload carrier, obviously, there is competition because the LTL carrier uses truckload freight for the backhaul and to fill out a load many times, and as the competition has become extremely intense on the truckload side, it has really taken away a lot of that backhaul freight for the LTL carrier and has driven up their cost per unit significantly, and that is why you have seen some of those rates go up higher on the LTL side than you have on the truck side. So there is an interrelationship here even though they are operated somewhat differently.

The CHAIRMAN. And is discounting prevalent in the trucking industry?

Mr. HILLE. Yes, absolutely, even in these small manufacturers, they are all getting some kind of a discount, and they range from 10 to 40 percent.

The CHAIRMAN. Is that good or bad?

Mr. HILLE. Well, I, personally, think it is bad. I would like to see rates flexible so you can change rates. But I really think you need price information out there, especially for the small guy, so he knows how these particular commodities are being moved, what the price is, so the small fellow can compete fairly with the large person, and in fact, as you know, 80 to 90 percent of our jobs that are new jobs that are being created are being created by small business today, and I guess I have a very strong feeling that they need to be kept in the information flow.

The CHAIRMAN. Mr. Taylor, I have no idea what the answer to this question is, but does the Robinson-Patman Act apply to trucking?

Mr. HILLE. No, it does not. It specifically does not apply to services, so Robinson-Patman does not apply to trucking.

The CHAIRMAN. Should it?

Mr. HILLE. It would help.

Mr. TAYLOR. Yes, it would.

The CHAIRMAN. And Mr. Taylor, in your view, is this a real problem for smaller shippers or people in outlying areas, the fact that there is rate discrimination and that they are not getting the preferred rate?

Mr. TAYLOR. Certainly, Senator, it is. It is a big problem in their being able to market their product in competition with other shippers.

The CHAIRMAN. Do you receive complaints on this score?

Mr. TAYLOR. Yes.

The CHAIRMAN. From your clients?

Mr. TAYLOR. Not so much complaints, but what can they do? They come to us looking for an answer.

The CHAIRMAN. And what they tell you—and this is new under deregulation, is that right?

Mr. TAYLOR. Yes.

The CHAIRMAN. What they tell you is what?

Mr. TAYLOR. I do not quite understand, Senator.

The CHAIRMAN. The typical person who comes in to see you, what is the general situation? What would be an example?

Mr. TAYLOR. His complaint is that he is having to pay a higher freight rate than his competition who may be in a better location, more convenient location for the trucker, and as a result, he then has to price himself out of the market.

The CHAIRMAN. What does that do for rural communities where the agricultural economy is already in desperate condition, where the shoe factory has been closed down?

Mr. TAYLOR. Well, it does not help it, Senator. It does not help it at all.

The CHAIRMAN. Only one more question, Mr. Taylor.

Do you have your World Series tickets yet?

Mr. TAYLOR. Not yet, but we are trying. It took us a long time yesterday, but we finally did it.

The CHAIRMAN. Thank you, Mr. Chairman.

Senator PACKWOOD. Senator Ford.

Senator FORD. Tell me more about these tickets. You just got my attention.

The CHAIRMAN. I could help you in either St. Louis or Kansas City.

Senator FORD. I am sorry, Mr. Taylor. I am going to stay with Danforth.

Senator PACKWOOD. I have no further questions, gentlemen. Thank you. Thank you very much.

Next can we take Thomas Donohue, the president and CEO of the American Trucking Association.

Mr. Donohue, go right ahead.

STATEMENT OF THOMAS J. DONOHUE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. DONOHUE. Thank you, Mr. Chairman.

It is clear to us that the experiences of the trucking industry since passage of the Motor Carrier Act reflect a whirlwind of pressures and conditions that could not be expected in 1980. I am not here today to suggest that deregulation is the principal cause of trucking industry problems; rather, to discuss with you and members of the committee these problems in terms of the best interests of the industry and of the shipper.

We are all aware that the industry has faced two major economic recessions, is now dealing with withdrawal liability provisions of the ERISA Act and pays higher State and Federal taxes than ever before. In fact, since 1980, trucking industry taxes have increased about 70 percent. We have not received the productivity provisions of the STAA as promised, particularly in terms of access in some States; and we now have on our plate an insurance dilemma unlike any faced by this industry in the past.

It is important that we consider these matters, Mr. Chairman, to focus on the importance and the essentiality of this industry as illustrated by the fact that access to trucking is considered by business to be the second most important factor in locating a new plant. A study was done in Michigan and reported recently in popular business magazines. On the announcement of General Motors Saturn plant, the popular press reported in the first four or five paragraphs that trucking was one of the principal reasons in deciding on that location.

Today we face the task of evaluating the Motor Carrier Act to determine whether the results that were intended by Congress have been achieved, and one way for me to do that is to ask a series of questions, and Mr. Chairman, I think the answers that I might offer for your consideration might be a little different from those of the witness from the Department of Transportation, but that is what makes this interesting.

First I would ask, has trucking competition increased since the Motor Carrier Act, and I would say yes, and that is very good. But the volume of freight handled in 1984 is actually below that which

was handled in 1978, so we have by definition more carriers handling a smaller amount of freight, and that a great deal of competition.

The second question I would ask is do shippers pay less for the same service than they did before the Motor Carrier Act, and the answer to that is no. These statistics come from the Federal Government, and we have looked at the fact that freight rates have increased faster than the Consumer Price Index, and in fact, in a macro sense, shippers are paying more.

The third question that I would ask is has the Motor Carrier Act improved the productivity of the trucking industry, and in a macro sense, the answer is no. Clearly, for a lot of very well managed, large companies taking advantage of new opportunities, productivity has gone up, but across the board it has not. Vehicle miles of truck travel and fuel use have both increased since the act, even though overall tonnage has not.

In addition, the productivity improvements, as I mentioned, promised by STAA have not materialized, and I put in our formal statement a list of a half a dozen States where it is actually a joke, and we need some assistance.

Now, another question that we would ask is is the trucking industry in sounder financial shape? And I would answer with a series of statements. First, during the first 3 months of 1985, 45 percent of the companies still in this business operated at a loss. In other words, nearly half of the industry is in a negative financial position.

Profit margins are down, below 3 percent, on the whole for the industry, and that is not enough to replace capital and maintain a strong industry position. Bankruptcies, as you know, have gone up significantly since deregulation, but it cannot be attributed totally to that phenomenon. We had two major recessions, to contend with.

The other point that we have to note is that the withdrawal liability factors are keeping more than 200 companies in this business who would sell, merge or go out of business, and they are underpricing the product significantly just to pay themselves and to pay off their trucks.

We should also point out from a financial perspective, as I mentioned briefly, that taxes not only on the Federal level but in the State and now in some local areas are going up beyond belief, and that we are now the highest taxed industry in America under Federal law, and at the rate the States are going, we will shortly hold that honor as well.

Finally, I would mention from a financial perspective that our insurance rates have increased between 200 and 600 percent, and if we want to look just a bit further, Mr. Chairman, this problem will get a lot worse come January when those companies who are offering the liability insurance on the hazardous materials and environmental restoration questions will not be in a position to offer insurance.

I would ask a final question, and that is one that is probably more important than all the others, and it is has motor carrier safety improved or not? And that for us is a big question mark. With 12,000 new carriers in the business, there are problems on

the roads, and I think it is important to note that this association, ATA, has made a major commitment to a program of safety and of explaining that program to the American people.

Let me conclude by saying that from our perspective the full effect of deregulation is still unclear, and contrary to your wish at the beginning of the meeting, Mr. Chairman, we would hope that you would continue these oversight hearings. We see them as useful and provocative, and we hope that we can continue this discussion. The long term effects of deregulation remain to be seen. We think that common sense and fairness suggest that Congress reject additional regulatory changes in the trucking industry at this time.

By fact and by perception, further legislation deregulating the trucking industry would be a disservice to the carriers, to the shippers, to the economy, and we believe to the American people.

Let me conclude my remarks by saying, Mr. Chairman, that many of our problems can be better consolidated and dealt with if we could pass a law that would put a motor carrier administration in the DOT that would give us equity at the highest levels.

And Mr. Chairman, let me put into the record two documents that will support that. The first page of the phone book at DOT which carries a picture of every mode of transportation except a truck. Second, and with great pride a list of 15 organizations, who support that legislation, including the National Safety Council, the Brotherhood of Teamsters, the Motor Vehicle Manufacturers, and others.

Mr. Chairman, let me conclude by thanking you and the members of the committee and your staff for their support and their encouragement and their very valuable assistance during my first year in this position.

Thank you very much.

[The material referred to follows:]

DIRECTORY

OCTOBER 1984

SUPPORTERS OF A MOTOR CARRIER ADMINISTRATION

American Retreaders Association
American Trucking Associations
Food Marketing Institute
International Brotherhood of Teamsters
Motor Vehicle Manufacturers Association
National American Wholesale Grocers Association
National Association of Truck Stop Operators
National Automobile Dealers Association
National Farmers Union
The National Grange
National Safety Council
Truck Body and Equipment Association, Inc.
Trucking Industry Alliance
Truck Trailer Manufacturers Association
United Bus Owners of America
United Fresh Fruit and Vegetable Association

Senator PACKWOOD. Thank you. You have done a sensational job, Tom.

Question. You said, "Do shippers pay less for the same service than they did before the Motor Carrier Act? No, in spite of competitive pressures which allow shippers to negotiate free market rates with carriers, average freight rates have increased since the Motor Carrier Act. Indeed, since 1978 freight rates have increased faster than the Consumer Price Index."

Setting aside for the moment that the Motor Carrier Act did not go into effect until a number of years later, is the unwritten conclusion to that question that they would not have gone up as fast had we continued regulation?

Mr. DONOHUE. Well, Senator, that would require a couple of questions. Had we continued under regulation, would we have gone ahead with STAA and significantly increased taxes? Had we continued regulation and not had 12,000 entrants, would we have had a 300- 400- 500-percent increase in insurance? Had we continued regulation, would we have had the massive increase in costs in the States? It is very hard to say.

I really think that it is important to look at this industry, as you have just done in your question, from an economic and a service point of view, and then to look at the question of regulation. So I will say regulation or not, the phenomenon of taxes, both State and Federal, of insurance, of the increase in fuel costs, very significant ones, and of the increased costs in labor brought about during this 5-year period of time would have given us a serious problem no matter what our position.

And I think it is important for the committee to understand that I am not sitting here saying that the 1980 act was the wrong thing to do, that deregulation is the wrong way to go. What I am saying is if you look at this industry as a totality, with the strain and the pressure on it and the need for it to serve the American people, to put on top of it further deregulation, whether by fact or perception, will be trauma at this time.

Senator PACKWOOD. Now, let me ask you again. My question relates only to the shippers, because basically we do not know whether the costs would have gone up more or less had we not passed the act.

Mr. DONOHUE. That is right.

Senator PACKWOOD. How significant a problem is it for you, for the trucking industry, in terms of the larger trucks that we have permitted in actually getting them on the highway, and more importantly, off the highway to someplace where they can unload?

Mr. DONOHUE. Well, Senator, in California, to get off the highway, the first trucker off is supposed to rebuild the road and put up the signs. In New York you can get off a fifth of a mile. In Georgia we only have 5 percent of the system that is in the designated highway, and so getting off becomes almost impossible. In many places you have to get a permit, and the permit costs money. And all of this is not in the spirit of what we intended, and in many cases, a very legitimate concern by the States. And we need to demonstrate the safety of the double bottoms, we need to demonstrate the safety of the 48 footers, we need to demonstrate that we can drive, as buses have for years, on less than 12 foot lanes, and it is going to take time, and it is going to take a major commitment from the industry as well as from the Congress and the States. But you know and I know that one of the major problems we have is that we have regulations in every State that differ. You have to have a secretary to drive across this country to keep track of the paperwork, and we need some help on that, and we are working on that, and safety in particular. And we are supporting many things that will bring that to pass.

We have a real problem on productivity, and we are not getting the benefits we should.

Senator PACKWOOD. You were on the same side as many of the other witnesses on preemption. In fact, I have run across very few—we have not had the NARUC, the National Association of Regulatory Utility Commissioners testify, and my hunch is they may not look kindly upon preemption—but almost everybody else who ships, whether as truckers or shippers, does favor preemption, and I think there we might find some common ground.

In two or three, maybe more, of the statements that I read over the weekend appeared the statement that as far as truckload shipments are concerned, they for all practical purposes now are unrelated to any collective ratemaking.

Is that true?

Mr. DONOHUE. Well, it is true with one small exception, or a couple of exceptions, Senator.

First, in any industry there are price leaders, there are pricing mechanisms that let people find out—for example, if you move groceries you have one set of liabilities. If you move high technology products, you have other insurance requirements, you have different shipping requirements, all which affect the price. So the truckload people watch the less-than-truckload rates for those kinds of indications that they do not have the expertise to determine themselves.

And I think also some truckload folks who are not really the big companies use that as a price indicator.

As you know, having studied the issue, that even if we deregulate this industry at some point totaliy, we are going to have to have some price leader system or some index so that people can figure out those basic calculations. Otherwise you have to be a major company even to participate.

Senator PACKWOOD. Well, my hunch is you will have price leaders, and with computers you will either have the companies themselves, even small ones, or brokers. They will turn to the Tim Lees of the world who will know almost to a farthing how much different companies are charging, and especially for truckload lots.

Can you honestly see any continued need for antitrust immunity for collective ratemaking as far as truckload shipments are concerned?

Mr. DONOHUE. You are not supposed to hedge with Senators, so let me answer the question backward.

The biggest need for antitrust immunity and for the collective ratemaking system is with the less-than-truckload carriers. There are some ancillary benefits for the truckload people, but they are not as significant.

Let me say one thing about your previous witness and the brokers. The good brokers are very important to this industry and very well managed. There are a lot of brokers in this industry that are hurting the owner-operators and hurting this business because it is an explosive new concept, and it is something we are working on as an industry. But you heard your witness say that only a small percentage of the brokers belong to his professional association. It is the other guys we are worried about.

Senator PACKWOOD. It is a relatively newer profession in terms of the masses of people getting into it.

Mr. DONOHUE. That is exactly right.

Senator PACKWOOD. It did not exist much before 1980.

Mr. DONOHUE. That is exactly right.

Senator PACKWOOD. Apart from the fact that you would like to have continual oversight hearings on the act as it is and no further change for a while, what is the next most important thing this Congress could do to help the trucking industry?

Mr. DONOHUE. Senator, I think the thing that would really clear up—two things, if I might. One is we need help on the ERISA situation. We have these 200 or 300 companies that if they go out of business today are going to lose one and a half or two times their net worth, and their family fortunes, if there are any, and we need to find, as the Teamster witness indicated, some cooperative way to resolve that problem, and anything you can do will clear up the market, will put this industry in a position to be evaluated more analytically, and will really save a lot of personal suffering.

The second thing we all need to get behind is a massive safety effort, and we need to spend the funds that have been appropriated to assure roadside inspections and to assure the proper utilization of the law as put—sent over to DOT. I mean, we are going into an issue now, Senator, we are going to form our own driver check system, we are going into a contract with a company to do it because now we are looking about a national driver registry that is out into the 1990's before DOT gets it done.

Well, we need to get the bad drivers off the road. We need inspections on the road, whether they are random sample or whether they are just looking for the bad trucks, whatever it is, we want those inspections, and we want the bad guys off the road.

So I would say two things: Help us with this pension problem because it is very, very onerous, and No. 2, let's everybody work to-

gether on the safety issue. I mean, you take that one little event on Friday when that propane truck went over on this beltway. I am going to have a long time talking to the Congress about all the other issues that we are interested in, and yet that truck had new tires, it was run by a private carrier. It had just recently been inspected. It was driven by a qualified driver without any problems, and it went over. We are always going to have those problems. But every time we get them, it makes everything else more difficult.

Safety is good business; it is good citizenship; and it is damned good politics, and we are going to work very hard on it.

Senator PACKWOOD. Senator Danforth.

The CHAIRMAN. Thank you very much.

You know my interest in safety, and you very strongly stated your views of it.

If you have anything else you would like to add in the safety area before I get into any other subject, you are welcome to do it.

Mr. DONOHUE. Well, I would just say that we are going out with a major new image program on that, but behind it there is a lot of substance. We will have a major professional driver training program. We are going into this contract to try and identify the drivers with dozens of licenses and many violations. We support the Motor Carrier Safety Assistance Program and we need to go ahead and provide that money that has already been authorized for DOT to get off the dime on that, and any suggestions on that matter we will listen very carefully to.

The CHAIRMAN. You were here when Mr. Haseltine testified. He was asked about comparable tax burdens of the trucking industry on one hand and the railroad industry on the other, and he said that he was going to furnish information about that. His view was that it was relatively the same.

Do you think that is correct?

Mr. DONOHUE. Well, Senator, I look forward to those numbers with a great deal of interest, but when we pay a 38 percent effective Federal rate and the railroads pay 2 percent, when we pay fuel tax and when they do not, when we have no protection from discriminatory State taxation and they do, he had better have some pretty fancy numbers.

The CHAIRMAN. Could you furnish any numbers that you have on that?

Mr. DONOHUE. Yes, sir, we would be very happy to do that. There are some in the testimony, but we will prepare a summary memo on that subject and make it available to the committee in the next few days.

[The following information was subsequently received for the record:]

EFFECTIVE RATES OF TAX FOR TRUCKING AND RAILROADS

There are numerous ways of measuring effective income tax rates. Although they differ as to methodology, most calculations show that railroads have a far lower rate than trucking.

One approach is to divide total income tax after credits by income subject to tax as reported on tax returns. Data covering all corporations in the "railroad transportation" and "trucking and warehousing" industries are available for 1982 from the Internal Revenue Service's "Statistics of Income—Corporation Income Tax Returns, 1982". In that year, railroads paid $89.191 million in tax after credits on income

subject to tax of $704.339 million, for an effective tax rate of 12.7 percent. Trucking and warehousing firms paid $543.936 million in tax after credits on income of $1,743.228 million, for an effective tax rate of 31.2 percent.

A study that provides a longer time-frame for comparison is the "Study of 1983 Effective Tax Rates of Selected Large U.S. Corporations" prepared by the staff of the Joint Committee on Taxation and dated November 28, 1984. This report, also called the Pease-Dorgan study, calculated the ratio of income tax expense to income before tax as taken from annual financial statements of several large corporations in each industry, for the years 1980–83. The U.S. effective tax rates for railroads and trucking as reported on page 22 of the study are:

[In percent]

	1980	1981	1982	1933	1980–83 average
Railroads	10.7	−7.5	4.1	3.3	2.4
Trucking	37.5	46.1	36.9	34.5	38.2

For the four years combined, trucking had the highest effective tax rate of any industry and railroads had the lowest.

However, income taxes are only part of the story. The trucking industry also pays a huge amount of federal and state user taxes on fuel, vehicles and parts that railroads escape. Although these taxes in theory are related to spending that benefits trucking, the money in many cases goes to nonhighway uses or to roads that trucks seldom if ever use.

In short, we have seen no evidence that shows railroads bear a tax burden comparable to that of trucking. On the contrary, several studies show trucking is taxed far more heavily.

The CHAIRMAN. Thank you.

Now, you have been at the ATA for a very short period of time, about a year or so.

How do you feel about this industry? Do you think you have signed on to a sinking ship, or do you think that there will always be trucks and everything is going to be just great? We certainly have heard a variety of testimony today about the health of the trucking industry. We have heard some testimony that deregulation has been the greatest thing in the world and the trucking industry is doing just fine. On the other hand, the Teamsters came in and described the great difficulty they have been having.

From your perspective, having spent some time now but not being born and raised in the trucking industry, I think it would be a pretty good perspective to share with us.

Mr. DONOHUE. Well, Senator, let me make a couple of comments. First, no matter what this committee and this Congress does, no matter what ATA does and no matter what all the rest of the witnesses that come up here today do, trucking is going to be in business forever, and forever, and forever because there is no way to move the goods of this economy otherwise. Seventy-three percent of the communities in this country are totally dependent on trucks for every single good that moves in and out of that community, and one of the reasons I took this job is I knew that we would not shortly be eliminated by technology, notwithstanding the fact that technology is going to radically change the business.

The second observation I have, and it really surprised me because I worked for the Chamber of Commerce of the United States, you know, I thought I knew something about business, but I never

realized the essential dependence of American manufacturing and the American economy on the trucking business, nor did I fully appreciate the quality of the people and the wonderful, wonderful investment that has been made by families and entrepreneurs and just exciting people and the commitment to this business.

I have been somewhat taken back by the tax situation and by the effects of a changing environment and a maturing industry, but I have signed on for the long haul. I think this is an industry whose future is ahead of it, that is maturing. One of your witnesses said we are going from operations to marketing. We are doing more than that. We are going to asset management. We are going to new technology. We are working more closely with the AASHTO people that build the roads. We are working more closely with the manufacturers. We are trying to do a professional job.

And I think that the best times are ahead of the industry, and the only thing we collectively can do to louse it up is not to be analytical and thoughtful and work with one another.

The CHAIRMAN. One of the witnesses said that while it is true that the late 1970's and early 1980's the trucking industry went through some wrenching times with deregulation, with the energy tax, with the recession, those are behind us now and that there has been a period of several years of stability and therefore this would be the time for further deregulation. In other words, the dust has already settled, there is no need for the dust to settle any more. Let's get on with further deregulation.

My understanding of your testimony is that that notion is not shared by you, but would you spell out your thoughts as to the current stability in the trucking industry?

Mr. DONOHUE. Well, I do not believe the dust has settled, Senator. We have a major tax bill which Senator Packwood is about to handle which is very significant to us. We have serious trade problems. Every time you take a car offshore to manufacture it, we do not carry the material, the raw material, the half-finished products. There is less freight today than there was in 1978. There are 12,000 more carriers carrying it. There are tremendous profit and bankruptcy and liquidity issues. There is the insurance crisis which has appeared in the last 6 months, and we do not need to argue all the reasons for it. It is just the cost has significantly gone up.

We are faced with a series of economic factors, notwithstanding the regulatory issue, which suggests to us that to put another factor on top of it, and that is to move forward with some of the bills that are proposed, is not timely, and it would just bring hardship in its implementation, if for no other reason. And I want to say again, ATA is not up here saying that what was done is wrong. We are not up here saying that down the road there should not be other things discussed. What we are saying is that common sense suggests that with all these other problems that we have to resolve, ERISA, taxes, insurance, maybe we ought to wait until later. And as the Chairman indicated, he is going to be very busy this fall, and the White House has a lot of other things they would like to advance, and we have been encouraging them to put them in the order of priority. Taxes are very important, ERISA is very important, safety is very important.

We get all that done, then we could take up other matters.

Senator PACKWOOD. Senator Ford.

Senator FORD. Thank you, Mr. Chairman.

Mr. Donohue, you appear to be like most of my constituents I have talked to in the month of August. They are going ahead and trying to do it on their own instead of trying to wait for the Federal Government, and you indicate that your industry and your association is going ahead with your safety program where it looks like the Department of Transportation, did I hear you say 1990?

Mr. DONOHUE. I think 1993 they finally think they can get a driver record worked out.

Senator FORD. Well, let me ask you then as we get into the trucking safety, that is one of your problems with the imagery with the general public, and I am inclined based on what I know now to assist you in working with the Department of Transportation to create a Motor Carrier Administration.

Give me a little more detail as it relates to what that administration could do as it relates to safety, how it would fit into—how you see it would work.

Mr. DONOHUE. Senator, I think the first thing is it would give trucking and motor carriage, buses as well, a visibility at the senior level of the Department of Transportation. When the study on double bottoms came out, on their safety and utilization, one of the major conclusions was that it was not good for railroads. Well, obviously the people that sat around and discussed that did not include any people from the trucking industry. We do not want to spend a lot of money. We do not want a huge bureaucracy. We just want to take some of the issues that affect trucking, safety predominantly, productivity, fitness, you heard Reese Taylor say today that that is something that DOT ought to be taking care of. We want to put those under someone that has equal clout and prestige within DOT and here before this committee.

And I think another thing that we are all going to find out over the coming years, and Senator Packwood and others, we have all struggled with it, is the information base. DOT is collecting less and less information. ICC is really cutting down on their information base. And how are we going to evaluate this industry and how are we going to measure its safety, and how are we going to find out how we ought to deal with the roads.

We had two fellows at a meeting we had the other day from DOT. One fellow said he knows exactly how trucks wear out the roads. Another fellow said no, he does not know, he needs $150 million to figure it out.

We need to have somebody, something in DOT that represents us at a level equal to the other carriers, and safety would be a major component of that.

Now, I want to applaud Elizabeth Dole and the administration for putting in an associate administrator in the Highway Administration, and I might think that some of our cheering has led to that, and we have an excellent man there, a tough guy, an enforcer who has been with the Arizona Highway Patrol, and we are very encouraged that that is going to help us with the safety issue. But he is still down on the sixth floor and gets very little visibility on the top floor.

Senator FORD. Let's talk about the insurance business. You say in the last few months it has increased from 200 to 600 percent.

I got an inference from your testimony that it was not necessarily those that have been in the business for some time. It may be that avalanche of new carriers that have moved into the business that has created some problems with less training, vehicles probably not as well prepared for travel as those who have been in it for some time.

Give me some of the problems as they relate to the insurance business and the huge increase.

Mr. DONOHUE. Senator, the first problem is not just a trucking problem, but when the insurance companies stopped making 20 percent on their premiums and started making 8 or 9 percent, they had a significant reduction in income, and then when they went forward and had to deal with three other factors, that is, the tremendous judgments that have been forthcoming on some issues, the question that the English reinsurance companies have decided not to pay for the refurbishment of the American environment, and the fact that in the face of all these issues the State insurance commissioners have been significantly jacking up the reserve requirements, now we look at that as the environment we are in, and then we go out and say OK, we are going to have 12,000 new carrier that have to have X amount of insurance, and you begin to eat up the capacity pretty soon.

There are laws in 30 some States in this country that say that the insurance rate must be related to the previous premiums paid and the claims experience, but that has not been the case. No matter what the cause is, whether it is the 12,000 new carriers, whether it is all the problems of the insurance industry, people that have been in business with insurance companies for 20 years and 30 years are being canceled, they are having their insurance go up 200, 300, 400 percent. It is a national phenomenon, and you will find it is not just related to trucking; it is going to affect airlines, particularly the last couple of weeks we have had some serious problems. It is going to affect the railroads.

The big guys are self-insured, you see, and they have their own offshore companies, but as the reserve requirements go up, they are going to have serious problems as well.

This is a national problem, it is not a trucking problem, but it affects trucking very, very much because they cannot run without it.

Senator FORD. One of the items I understand is that the cash flow was very effective as it related to profit, and now that percentage interest on that cash flow has declined, that the appetite for cash flow has created some additional problems for the insurance companies, too.

Mr. DONOHUE. That is true.

Senator FORD. That may be something that this committee would like to look into at some time as it relates to what the problems are, and I think you have stated it accurately, that it is a national problem when it affects your industry at 600 percent.

One final question. Tell me a little something about your congressional truck caucus, just the nature and the role of that caucus. Let us hear a little something about that.

Mr. DONOHUE. Well, as Jerry Halverson, our vice president for government affairs, said there is even an avocado caucus in this country. We decided that because trucks affected every industry in this country, because trucks affected the price of the product, the location of the plant and the movement of jobs in and out of this country, that we would go to the Congress first, the House of Representatives, and try and put together a group of people that could come together from time to time on the noncontroversial but essential issues of taxes and productivity and size and weights, and we were very successful in having a number of the significant members of the Congress join, and we doubled the size of that caucus over the recess. So we are very excited about that, and we look forward to working with you and the Senator and others to get a similar caucus here in the Senate, just some way that we can communicate on a regular basis on these issues that affect our industry.

Senator FORD. Thank you, Mr. Chairman.

Senator PACKWOOD. What is the figure you used a couple of times about 12,000 more carriers, but there is X less freight?

Mr. DONOHUE. If you look at the freight curve—and it is in the testimony, Senator, it starts out in 1978 and it bottoms out in 1982–83, and it has come up pretty close in 1985 to the 1978 figure, but for the purposes of dramatic testimony, it still has not reached there, and what I am saying is that the bulk, the total freight in the United States in 1984–85 right now is less than it was in 1978.

Senator PACKWOOD. What is total freight measured by? Is it weight?

Mr. DONOHUE. I have to plead some ignorance, but I believe it is weight or tons, and I would be very happy to get a little bit of expansion on that material. It is not our numbers, Government numbers. The point we are trying to make here is that although we have added a lot of people, with the import problems, import-export arrangements, with the—you know, we have taken 1,100 pounds out of every car as we have attempted to get——

Senator PACKWOOD. That is what I was curious about. Between 1978 and 1985, despite the fact we have had a bad recession, the total gross national product, real gross national product is up rather significantly.

Mr. DONOHUE. A lot of that is services.

Senator PACKWOOD. Well, that is what I was coming to, as to whether it is things that are not transported, or whether the things that are transported are much lighter than they used to be.

I would appreciate some more information on it.

Mr. DONOHUE. Just two comments about that and then we will be very happy to provide it.

We have taken 1,100 pounds out of every car we manufacture in the United States. You figure the cars over those 5 years, multiply the fact that we carried that 1,100 pounds three or four times, you are talking about a lot of——

Senator PACKWOOD. I look at all the 20-year-old electronic gear I still have around.

Mr. DONOHUE. That is right.

Senator PACKWOOD. With the large transformers in it.

Mr. DONOHUE. Look what it is now.

Senator PACKWOOD. I like to think it is just heavy, not that I am getting older as I carry it around.

But it clearly is infinitely heavier than the equipment you can buy now.

Mr. DONOHUE. We would be very happy to provide some additional information on that.

Senator PACKWOOD. Thank you. I would appreciate it.

Any other questions, Wendell?

Senator FORD. Mr. Donohue, what about imports? Have the increased imports, have they come into this country that eliminated some of your in between, some of your materials or preparing materials to go someplace for a finished product? Has that affected the trucking industry at all?

Mr. DONOHUE. Senator, if it comes to the dock in San Francisco, we carry it once. If it's made in the United States, we carry it between 3 and 15 times.

Senator FORD. Thank you.

Senator PACKWOOD. Thank you very much. We appreciate it.

[The statement follows:]

STATEMENT OF THOMAS J. DONOHUE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN TRUCKING ASSOCIATIONS, INC.

I. INTRODUCTION

I am Thomas J. Donohue, President and Chief Executive Officer of the American Trucking Associations, Inc. I submit this statement on behalf of ATA.

ATA is the national trade association of the trucking industry. Through its 51 affiliated trucking associations located in every state and the District of Columbia, as well as through its over 3,200 individual motor carrier members, and 11 affiliated conferences, ATA represents every type and class of motor carrier in the country: for-hire and private; regulated and exempt.

The trucking industry employs 7.4 million Americans and generates annual revenues in excess of $200 billion. Each year 5 million trucks log more than 138 billion miles with an overall safety record that is almost twice as good as that for automobiles. These trucks, operated by more than 260,000 American firms, haul 77 percent of the dollar value of all freight carried in this country.

We come to these hearings with the implicit understanding that the MCA was intended to have certain beneficial impacts on the American economy, the trucking industry, the shipping public, and the consumer.

Not surprisingly, the experience of the trucking industry since passage of the MCA reflects a whirlwind of conditions and pressures that could not be anticipated in 1980. Since these factors frequently overlap, we are unable to separate their effects from those of the MCA.

With all its financial ups and downs, the American trucking industry continues to provide an essential transportation service to the largest economy in the world. The essentiality of our industry is illustrated by the fact that access to trucking is considered by business to be the second most important factor in deciding where to locate a new plant, ranking behind only cost of property. It is clear that practical business decisions are made in the confidence that the truck transportation will be available when needed.

One of our common objectives—your as makers of public policy and ours as providers of a publicly available service—is to ensure that businesses' expectations of an efficient, responsible transportation service are well-founded. These hearings give us both an opportunity to evaluate the proper functioning of an essential transportation industry and seek ways to improve the service that the trucking industry provides to the public.

Some of the major questions for consideration include the following:

Has trucking competition increased since MCA?

Do shippers pay more or less for the same service than they did before the MCA?

Is the trucking industry in sounder financial shape?

Has MCA improved the productivity of the trucking industry?

Have economic and operating conditions in the trucking industry stabilized?

Have trucking services improved?

Our testimony will attempt to answer some of these questions and show economic conditions within the trucking industry as regulatory changes have progressed. It will identify other public policy challenges that we all must face if the industry is to do the job expected of it.

The move to deregulate the trucking industry is part of a larger movement to increase competitiveness in many aspects of American economic life. Our experience with these changes in the trucking industry tells us that pursuit of a generalized concept such as "deregulation" cannot by itself solve complex economic problems. An evaluation of the effects of deregulation in the airline, telecommunications, and banking industries would support that assertion.

Our common objective should be the preservation and enhancement of an industry that provides the most efficient freight transportation service possible to the 235 million Americans who rely on trucking for essential products, a healthy economy, and a strong national defense.

ATA efforts

Since the last time I addressed this Committee, ATA has worked vigorously on a series of measures aimed at improving the condition of the trucking industry, our highways, and the economy.

We have come out in support of a compromise proposal on the Federal budget that would reduce the deficit by $56 billion without raising any additional taxes.

We support the President's tax reform proposal that promises significant benefits to our industry and the economy by reducing the top corporate income tax rate from 46 percent to 33 percent.

We continue to promote safety on our highways through: (1) support of the 55 mile per hour speed limit; (2) endorsement of the Tandem Truck Safety Act of 1984; (3) implementation of ATA's new image campaign which focuses on driver professionalism; (4) support of the Commercial Vehicle Safety Alliance and Motor Carrier Safety Assistance Program, particularly their roadside inspection program; and a host of other safety activities.

We have pushed the states and DOT for increased industry efficiency through the use of the more productive equipment authorized by the Surface Transportation Assistance Act of 1982.

We are working on ways to resolve the current ERISA crisis affecting the trucking industry and have established a special task force to address this problem.

We are working with the National Governors' Association to reduce the tremendous cost of compliance with widely varying state regulations. These costs increase shipping rates and ultimately the price that consumers pay for finished products.

We have helped create a Congressional Truck Caucus to heighten congressional awareness and understanding of issues that critically affect the trucking industry.

And we are working with the American Association of State Highway and Transportation Officials to increase understanding on a whole range of issues that affect both highway users and builders such as safety, pavement, highway funding, and data requirements.

Finally, we are struggling to find a trucking industry solution to an emerging insurance crisis that threatens to impede the flow of commerce in this nation.

II. STATE OF THE INDUSTRY

Overview

The strength of the U.S. economy in 1984 presented the trucking industry with opportunities for substantial business improvement. The data show financial improvement for many firms but significant deterioration for others. Had the economic growth of the first half of 1984 continued throughout the year, a broader base of improvements might have followed. However, as economic growth slowed, competition and rate cutting continued, and the gains of the first two quarters began to erode. For the full year, ICC-authorized carriers handled more freight, travelled more miles, and generated greater revenues, but were no better off on the bottom line than in 1983, a poor year for the industry.

Industry concerns today are based on the same disturbing forces faced over the past several years:

Competition has grown very rapidly, but tonnage has yet to reach 1978 or 1979 levels.

The basic costs of operating a trucking company have escalated. These costs include fuel, taxes, insurance, and labor.

Rate cutting brought about by increased competition has reduced net income and essential capital investments.

The continuing interaction of these forces hinders a return to financial stability for many carriers.

The following measurements of industry performance have been obtained primarily through examining the segment most affected by the MCA—the ICC-regulated trucking firms. The operations of these motor carriers provide one of the few quantitative sources of industry data.

The perceptive reader will note that the following data are not all based on a common universe. As the Interstate Commerce Commission reduces the scope of its data collection effort and the Departments of Transportation and Commerce continue to disregard the significance of this data, the trucking industry, and in this case the Congress, will be forced to rely on incomplete and inconsistent data.

Competition increases

The number of competitors in the trucking industry continues to grow. ICC-authorized carriers numbered 30,481 at the end of 1984, almost 3,000 more than in 1983 and 12,436 more than in 1980. This represents a 69 percent increase since the MCA. Table 1 shows the growth in such carriers.

TABLE 1: NUMBER OF ICC-AUTHORIZED MOTOR CARRIERS OF PROPERTY 1978–84

	Class I and II [1]	Class III [2] (includes new entrants)	Total
1978	3,974	12,900	16,874
1979	3,746	13,337	17,083
1980	3,435	14,610	18,045
1981	3,707	18,563	22,270
1982	3,663	22,059	25,722
1983	3,106	24,411	27,517
1984	3,111	27,370	30,481
Percent change:			
1984/1980	(9.4)	87.3	68.9
1984/1978	(21.7)	112.2	80.6

[1] Class I carriers are presently defined as firms with annual revenues in excess of $5 million; prior to 1980, the revenue level was $3 million. Class II carriers are presently defined as firms with annual revenues between $1 million and $5 million; prior to 1980, the revenue level was between $500,000 and $3 million.

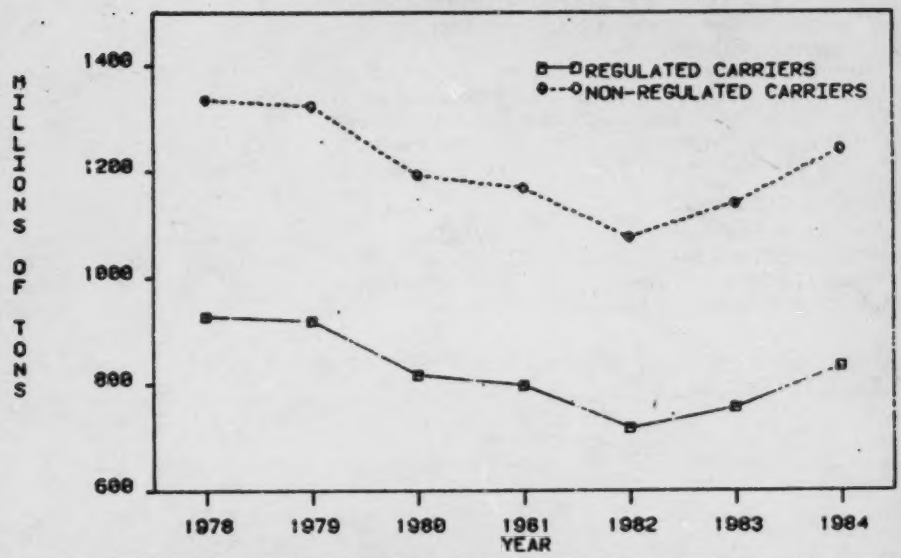
[2] Class III carriers are presently defined as firms with annual revenues less than $1 million; prior to 1980, the revenue level was less than $500,000.

Source: Interstate Commerce Commission Reports to Congress, 1978–1984, Appendix E.

More carriers are obtaining authority this year. Competition has also increased dramatically as a result of broadening motor carrier authority and greater levels of activity among private carriers, transportation brokers, freight forwarders, shipper associations and owner-operators. Yet total intercity truck tonnage has shrunk since 1978, as Figure 1 shows. Thus, new and expanding carriers have won business largely at the expense of existing firms.

FIGURE 1

DOMESTIC INTERCITY TONNAGE 1978-1984
REGULATED VS. NON-REGULATED CARRIERS



Source: Transportation Policy Associates, "Transportation in America," July 1985, Table - Domestic Intercity Tonnage Carried by Mode.

One of the reasons for the tonnage declines is the dramatic increase in imports. The dollar value of imports to this country has increased from $175 billion in 1978 to $340 billion in 1984. Moving imported goods, especially finished products, involves a different use of transport—a single movement to destination. This contrasts with transport of domestically produced goods in which several movements are required for raw materials, intermediate products, and finished goods.

Revenues improve in 1984

Shippers in 1984 spent $208.3 billion on freight transportation by truck, fully three-quarters of total expenditures on all forms of freight transportation, a 10.5 percent increase over 1983. Table 2 shows that the trucking industry's share of freignt revenue has increased since the MCA from about 73 to 76 percent.

TABLE 2: FREIGHT REVENUES AND TONNAGE—TRUCKING COMPARED TO U.S. TOTAL 1978-84

	All revenues			Intercity tonnage		
	Truck (in millions)	Total (in millions)	Truck percent of total	Truck (millions)	Total (millions)	Truck percent of total
	(1)	(2)	(3)	(4)	(5)	(6)
1978	$128,621	$173,995	73.9	2,260	5,710	39.6
1979	142,444	192,908	73.8	2,240	5,806	38.6
1980	155,190	212,774	72.9	2,007	5,501	36.5
1981	173,022	235,460	73.5	1,964	5,359	36.6
1982	176,792	235,269	75.1	1,791	4,921	36.4
1983	188,527	248,670	75.8	1,894	5,054	37.5
1984	208,343	274,227	76.0	2,072	5,452	38.0

Source: Transportation Policy Associates, "Transportation in America," July 1985 and selected previous issues; Tables—Nation's Freight Bill and Domestic Intercity Tonnage Carried by Mode.

Improved revenues were evident throughout the industry. ICC-authorized carriers generated a 12 percent increase in revenues on a 10 percent tonnage gain. Other intercity carriers (intrastate and private) handled nine percent more freight with a

10 percent increase in revenues. Local trucking operators also experienced 10 percent higher revenues in 1984 as shown in Table 3. No information is available on local freight tonnage.

TABLE 3.—REVENUES AND TONNAGE BY TRUCKING SEGMENT

	ICC authorized carriers		Other intercity carriers		Local carriers revenues (in millions)	Total revenues (in millions) (1) + (3) + (5)	Total tonnage (millions) (2) + (4)
	Revenues (in millions)	Tonnage (million)	Revenues (in millions)	Tonnage (million)			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
1978	$36,500	925	$43,069	1,335	$49,052	$128,621	2,260
1979	41,200	917	48,963	1,323	52,281	142,444	2,240
1980	43,000	816	51,645	1,191	60,545	155,190	2,007
1981	47,900	797	52,338	1,167	72,784	173,022	1,964
1982	44,100	717	57,682	1,074	75,010	176,792	1,791
1983	46,500	756	62,333	1,138	79,694	188,527	1,894
1984	52,100	832	68,565	1,240	87,678	208,343	2,072
Percent change:							
1984/83	12.04	10.05	10.00	8.96	10.02	10.51	9.40
1984/78	42.74	(10.05)	59.20	(7.12)	78.75	61.98	(8.32)

Source: Transportation Policy Associates, Transportation In Amercia, July 1985.

Costs on the rise

Despite increases in revenues, costs have increased at an even faster rate. From 1978[1] to 1984, total revenues of Class I (revenues of $5 million and up) and II ($1 to $5 million) ICC-authorized carriers have grown 47 percent. Expenses, however, have increased 51 percent. Revenue increases outpaced growth in expenses only once during this period—in 1983. In all other years, expenses grew faster than revenues. The result has been higher prices and declining operating income.

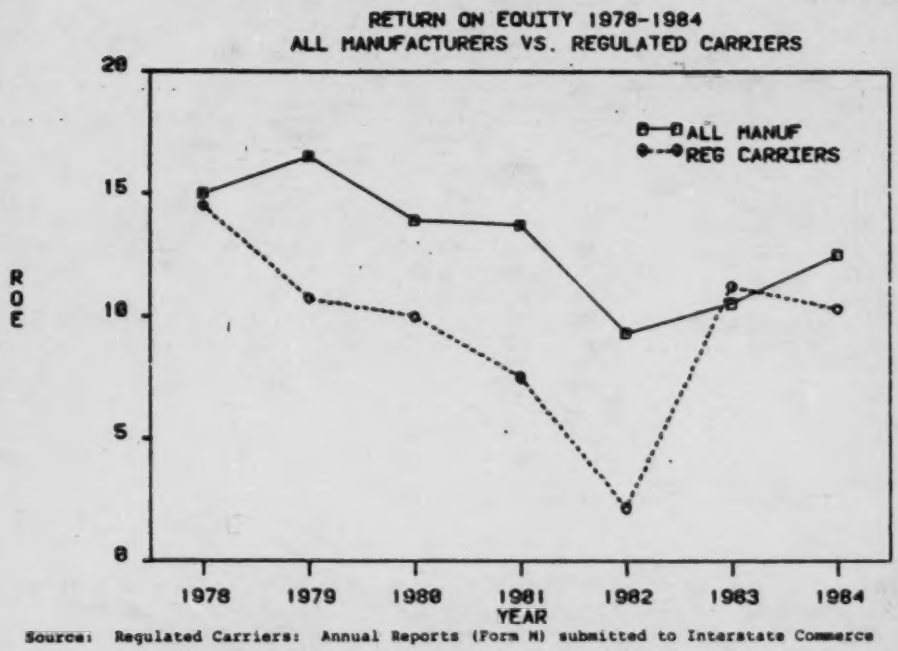
Net income after taxes of 2.35 percent of revenues remained below three percent for the sixth year in a row. Three percent is a traditional yardstick of a sound income level in this industry. ICC data on the top 100 carriers[2] also indicate a 12.6 percent decline in return on equity from 1983 to 1984. The estimated return on equity in 1984 for all authorized carriers is more than 25 percent below the 1978 level of 14.5 percent.

This performance contrasts unfavorably with that of business generally. The Interstate Commerce Commission uses the figures for manufacturers' return on equity and sales as a general industry gauge of profit performance. Manufacturers as a group reported a return on equity increase from 10.5 percent in 1983 to 12.5 percent in 1984, a gain of nearly 20 percent. Their net income after taxes also grew significantly from 4.05 percent to 4.6 percent. Figures 2 and 3 chart the trends in return on equity and profit margins respectively.

[1] Deregulation began in 1978 through administrative actions of the ICC.

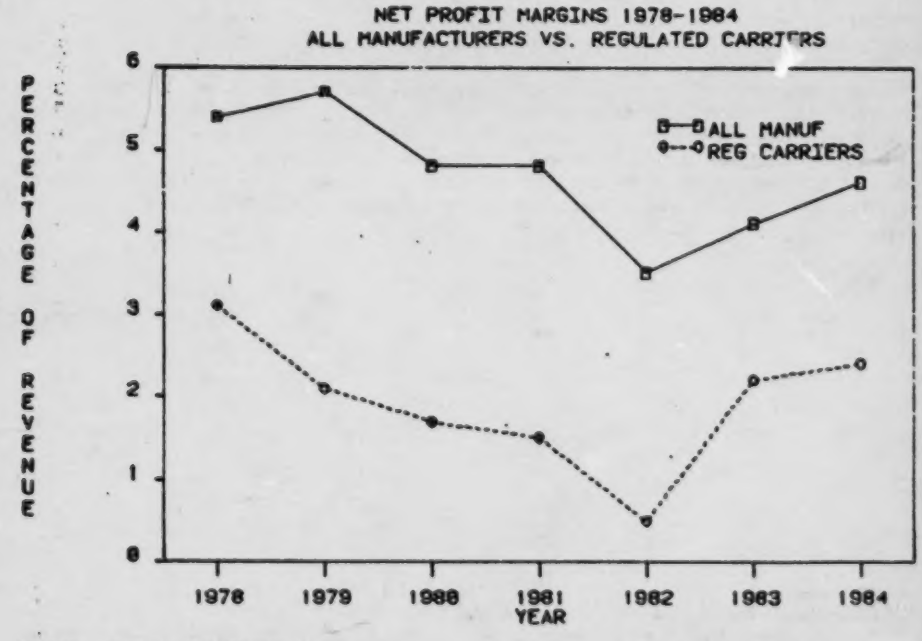
[2] The ICC closely follows performance by the top 100 carriers as a gauge of industry health. Further, return on equity for 1984 is presently only available for the top 100.

FIGURE 2



Source: Regulated Carriers: Annual Reports (Form M) submitted to Interstate Commerce Commission and compiled by American Trucking Associations. All manufacturers: Department of Commerce, Quarterly Financial Report (formerly published by Federal Trade Commission).

FIGURE 3



Source: Same as for Figure 2.

Since 1978, motor carrier expenses have increased dramatically in several specific areas.

Overhead costs have risen as carriers added managerial staff, increased their sales and marketing efforts, refined communicaitons systems, adjusted tariffs, and otherwise positioned themselves for heightened competition. These expenditures have nearly doubled since 1978.

Fringe benefit payments have risen by more than 80 percent since 1978 in the general freight sector because of the demands of multiemployer pension plans, workers' compensation, and other benefit outlays.

Fuel prices have increased approximately 92 percent from 1979 to 1985 because of OPEC increases to the price of crude oil.

Federal taxes and license fees have increased dramatically. The Surface Transportation Assistance Act of 1982 and the Deficit Reduction Act of 1984 increased the average tax on a tractor-semitrailer 125 percent. STAA also encouraged states to raise their own tax rates to finance increased highway spending. For example, in 1977, out-of-state based truckers in Pennsylvania paid a $2.00 per vehicle fee. In 1982 that fee increased to $25 and in 1983 it changed to $36 per axle, or $180 per five-axle truck—regardless of the number of miles travelled. This fee was found to be unconstitutional but has been appealed by the state of Pennsylvania. Fleet operators in Maryland formerly paid $5 per fleet. Now they pay $25 per truck, again, regardless of miles traveled.

Insurance costs have skyrocketed as insurance companies have hiked premiums to compensate for low returns on investments and ridiculously high judgments. They rose 20 percent during 1984 even though the insurance crisis did not fully materialize until this year. Today, premium increases of as much as 300 percent are not uncommon.

Cost increases in these and other areas are affecting truckers of all sizes and types, making it more expensive to operate, reducing profits, and causing operating ratios to rise. It is not clear whether any particular size of carrier has been more affected by the MCA. For the past two years, Class I carriers have had better operating ratios than Class II carriers. The situation was reversed in 1982. Data are not available for Class III carriers (less than $1 million). It is clear, however, that smaller carriers are not outright beneficiaries of the MCA.

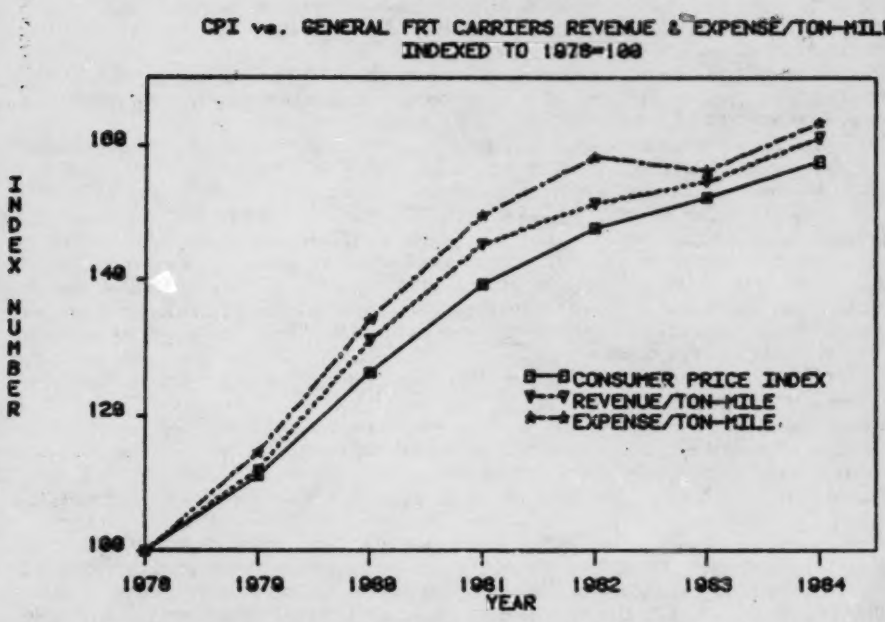
The disappointing carrier performance in 1984 has carried into 1985, according to reports of authorized carriers to the ICC. The first-quarter economy was sluggish, resulting in a tonnage decline from last year's levels. Revenues rose slightly—by two percent—but expenses again outpaced revenues. Net income dropped a dramatic 65 percent to a profit margin of less than 0.5 percent. Close to 45 percent of the carriers experienced operating losses.

Freight rate changes

One of the objectives of the MCA was to reduce freight transportation costs. We can determine whether this objective is being reached by comparing freight rate changes (i.e. revenue per ton-mile) to inflation.

Based on revenue per ton-mile for ICC-authorized general freight carriers, rates since 1978 have grown over 60 percent, outpacing the Consumer Price Index. Prior to 1978, rates had risen by less than the CPI. Unfortunately for the industry, expenses have risen even faster than revenues, as shown in Figure 4. Thus, shipper costs are higher today than they were before the Motor Carrier Act.

FIGURE 4



Source: Interstate Commerce Commission Annual Report - Form M (Compiled by American Trucking Associations) and Bureau of Labor Statistics.

Concentration increasing

There is a continuing trend toward concentration in parts of the trucking industry. While concentration in trucking remains below that in many other industries, many argued that it would not increase in an environment of deregulation. This argument was based on the assumption that trucking does not exhibit economies of scale. Nevertheless, concentration has consistently increased and continues to do so.

The top four ICC-authorized carriers' share of revenues, including the United Parcel Service companies, has grown from 12.2 percent in 1978 to 17.2 percent in 1984. The revenue share of the top 20 carriers has increased from 24 to 31 percent.

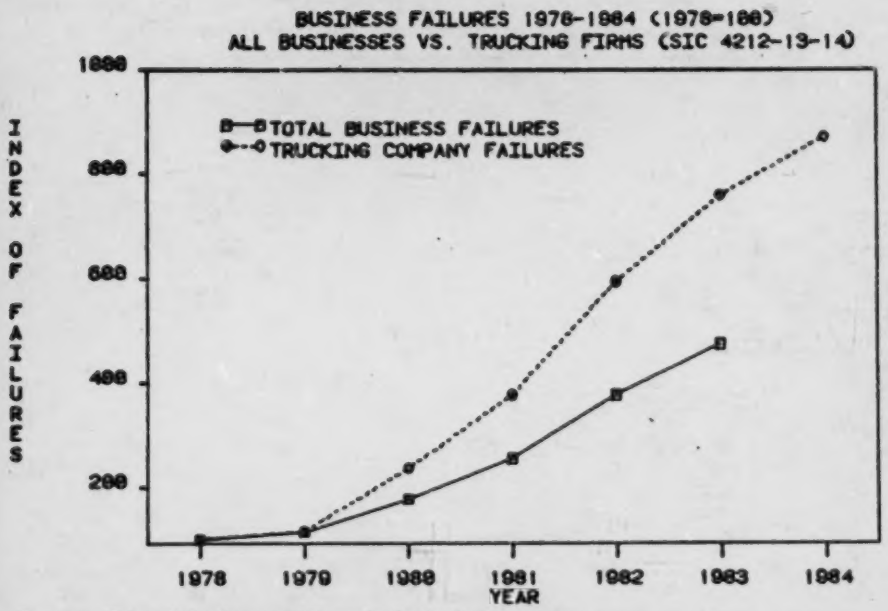
Within the general freight LTL (less-than-truckload) segment, concentration has been much more pronounced. In this segment, the industry's top four carriers' share of revenues has grown from 20 percent in 1978 to 35 percent in 1984. The revenue share of the top 20 general freight carriers has risen from 43 percent in 1978 to 67 percent in 1984.

Losses and bankruptcies

The substantial number of failures and bankruptcies among the industry's 100 largest firms reflects the industry's unsettled state. At least 20 carriers among the ICC's top 100 carriers in 1978 are out of business, bankrupt, or have been acquired under less than favorable conditions. Bankruptcies continue in 1985 for large as well as small carriers.

Dun & Bradstreet data show that failures have risen rapidly since entry was eased. In 1978, motor carrier failures totalled 162 compared with 1,409 failures in 1984. Failures would have been even higher had multiemployer pension plan withdrawal liability not hindered exit. Figure 5 shows motor carrier failures have risen more rapidly than total business failures since 1978 (the number of total failure is not available for 1984).

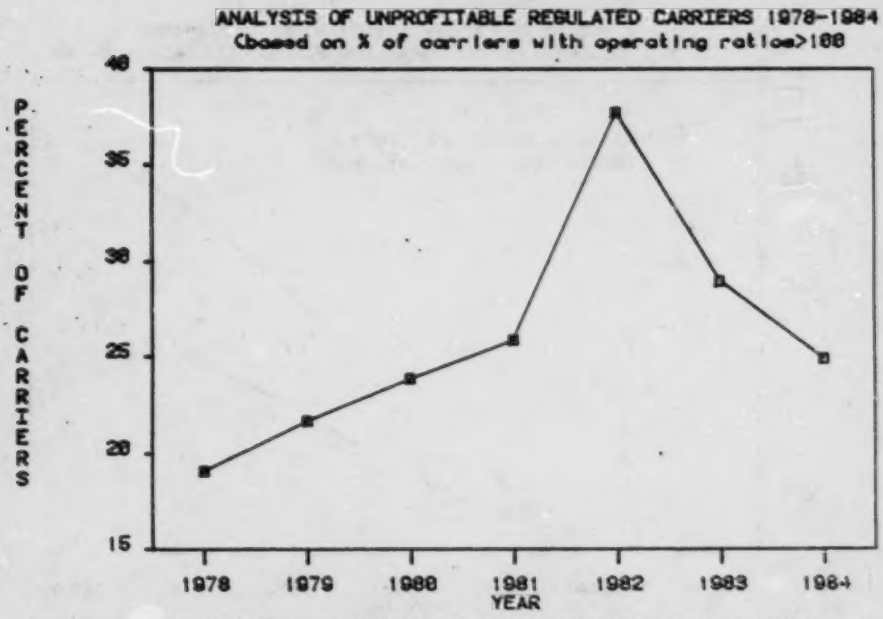
FIGURE 5



Source: Dun and Bradstreet, Economic Analysis Department.

A profile of carriers by operating ratio provides a further illustration of the industry's financial condition (Figure 6). In 1984, almost 25 percent of the surviving carriers had operating ratios of 100 or greater, indicating that total operating costs exceeded revenues. This was a change from 1983 in which 29 percent of the then surviving firms operated in the red. In 1978, only 19 percent of the firms experienced operating losses.

FIGURE 6



Source: Annual Reports (Form M) submitted to the Interstate Commerce Commission and compiled by American Trucking Associations.

Productivity declines

Productivity gains, which were presumed to be a natural result of competition, remain elusive. Intercity common carriers of general freight (LTL) have experienced a continuing decline in load factors since 1978, as measured by average load transported. Moreover, this decline in average load persists even though the carriers are using larger capacity vehicles, including twintrailers, 48 foot vans, and other more productive equipment in line-haul operations.

Coupled with the diminishing volume of freight and the increase in the nation's freight bill mentioned earlier, the reduced average load per vehicle for LTL shipments means that the efficiency of this part of the trucking industry has declined. While the nation as a whole pays more to carry a given amount of freight, the benefits of increased competition have been realized by a limited number of shippers at the expense of others.

In the intensely competitive truckload segments, on the other hand, the average loads have increased but have not produced enhanced profits. The operating ratio—96.3 in 1983 rising to 96.7 in 1984—is substantially worse than the 94.9 level of 1978.

III. REGULATION

The Motor Carrier Act of 1980 set forth several objectives: increased competition; price flexibility; greater efficiency, particularly in fuel use; reduced shipping costs, better service to small communities; and an adequate rate of return for carriers.

The framers of the legislation expressed uncertainty about some results of the Act, and called for a series of ovesight hearings, of which this is the last one required. From our perspective, many results of deregulation are still uncertain, and we ask that the Congress continue periodic oversight hearings. It is also clear to us that further deregulatory measures at this time will not advance the basic aims of the Act, and we ask that Congress refrain from any further deregulation, particularly with regard to collective ratemaking.

The benefits of continued regulation—including general rate increases and antitrust immunity for collective ratemaking—are most important to the general freight, less-than-truckload segment of the motor carrier industry. Within this segment, the top carriers are able to achieve economies of scale while providing accept-

able prices to volume shippers and a reasonable rate of return for themselves. At the same time, collectively established rates serve as a baseline for vigorous price negotiations between carriers and shippers. This constitutes a free-market environment.

Any further weakening of collective ratemaking, by legislation or administrative action of the ICC, will damage the ability of the trucking industry to provide the level of reliable, efficient transportation required for the nation's economy and defense

The most visible result of the MCA has been the increase in the number of carriers due to relaxed entry requirements. The resulting increase in competition was intended to have reduced shipper costs and increased operating efficiency. What has actually occurred has been a tremendous increase in capacity that exceeds the demand for service.

A larger number of carriers competing for a reduced volume of freight has lowered the average load per vehicle, resulting in reduced industry productivity. Vehicle miles of truck travel and fuel use have both increased since the Act went into effect, even though overall tonnage has not. The anticipated benefits of greater fuel efficiency have not been achieved on an industry-wide basis.

Price flexibility stimulated by deregulation has also failed to bring about a reduction in the nation's overall freight bill. Freight costs have increased faster than the Consumer Price Index as indicated earlier. Shippers are now paying more to move their products.

Price flexibility and economies of scale have increased concentration among the general freight carriers who handle small shipments. This segment of the industry generates the most revenues, and the evidence cited earlier shows that the top carriers are earning a continually larger share of that revenue.

Increased competition, rising costs, a limited volume of freight, and reduced productivity have resulted in a overall worsening of the trucking industry's financial position. Operating costs, some of them not under carriers's control, have risen faster than operating revenues. Truck lines are failing at an all-time high rate. This is hardly evidence of the "efficient transportation service" that the Act envisioned.

Some of the industry conditions that have come about since the Motor Carrier Act are not the direct result of the Act itself. Outside events, such as ERISA, taxes, and insurance, which are described more fully in this testimony, have had a dramatic impact. While deregulation has affected different carriers and shippers in different ways, it has raised transportation costs for the nation as a whole and weakened an industry during a period of general economic stress.

The long term effects of deregulation remain to be seen. Common sense and fairness suggest that the Congress reject additional regulatory changes in the trucking industry at this time. By fact and by perception, further legislation deregulation the trucking industry would be a disservice to the carriers, the shippers, the economy, and the American people.

IV. INERSTATE COMMERCE COMMISSION ACTIONS

The Interstate Commerce Commission has acted, or is proposing to act, in ways that contradict the objectives of the MCA. Recent activities involve the collection and dissemination of trucking industry data, the extension of credit by motor carriers to shippers, and the creation of a commercial zone along the Texas-Mexico border. Taken together, they will adversely influence carrier competitiveness and will create confusion and operational inefficiencies.

Data collection

The ICC proposes to eliminate the motor carrier uniform system of accounts and reduce the collection of industry statistics to a 13-item report to be collected only from Class *i* carriers. The data would consist of only the most general financial statistics, such as total assets, operating revenues, operating expenses and net income. If adopted, the ICC would collect data from only 1,088 of the more than 31,000 carriers subject to its regulation.

Numerous federal offices, including the Departments of Transportation and Commerce, the Office of Management and Budget, and the General Accounting Office currently use motor carrier data. As proposed, the reduction in data would not enable these agencies, Congress, or anyone else, to identify trends in operations or expenses (e.g., insurance, fuel, labor costs) which may require administrative or legislative response. Further, if the uniform system of accounts is also eliminated, the data submitted by individual carriers will be based on different accounting systems.

Financial institutions, insurance companies, other carriers and shippers also use these motor carrier statistics. If federal agencies and individual users had to develop their own data sources, the costs would be much greater than the cost of continuing the existing rules and procedures. Further, there is no cost to the ICC or the industry of retaining the uniform system of accounts which gives a common base to whatever statistics the agency collects.

Twenty-four states tnat require carriers to file reports have adopted the ICC's report form and uniform system of accounts. Thus, carriers need complete only one form and distribute copies to the appropriate states. Elimination of the ICC report and accounting system will likely result in a proliferation of individual state reports and systems, and cost increases to the carriers and the public.

We ask the Committee to direct the ICC to maintain the uniform system of accounts and to require the submission of data necessary to discharge its duties.

Credit rules

Last January, the ICC revised the rules by which motor carriers can extend credit to shippers.

Under the Interstate Commerce Act, a common carrier may only extend credit to a shipper based on ICC rules. The credit terms affect a carrier's cash flow, its ability to obtain financing and its ability to comply with ICC rules such as those requiring payment to owner-operators. Formerly, carriers were only allowed to extend credit for 7 days.

The new rules permit carriers to promulgate tariffs containing their own credit terms from 1 to 30 days, assess penalties for late payments, and offer discounts for early payments.

Competitive factors will force carriers to offer longer credit periods, slowing the carriers' cash flow and weakening the industry's financial position. It is also hard to justify the cost to carriers and shippers of auditing freight bills to determine if a discount is properly taken.

ATA, along with associations representing small shippers, supports a uniform 15 calendar day credit period and opposes service charges and discounts. The cost of implementing and enforcing the rules will far outweigh the savings or additional revenues that would be gained by most carriers and shippers.

ATA and these shipper associations have petitioned the ICC to reopen, reconsider and suspend the new credit rules. The ICC in May "took no action" on these petitions, notwithstanding that a majority of the Commissioners voted to reopen and reconsider the credit period and discount provisions of the new rules. Congress should encourage the ICC to reopen the proceeding and suspend the new rules.

Mexican carriers

The MCA adopted rules limiting the ability of Mexican motor carriers to operate in the United States. Upon obtaining a registration certificate, a Mexican carrier's operations are restricted to the commercial zones of U.S. cities contiguous to the Mexican border.

Even under these rules, Mexican carriers maintain a competitive advantage in the transborder trucking market. Mexican law still prohibits U.S. carriers from operating anywhere in Mexico.

The ICC now has pending before it a petition to create a four-county commercial zone in Texas adjacent to the Mexican border. The petition's purpose is to expand the legal operating zone for Mexican carriers from the relatively small commercial zones of border towns to an area encompassing over 5,000 square miles.

This large commercial zone will further the competitive imbalance in favor of Mexican carriers. It would also set a precedent that could lead to creating or expanding other commercial zones, perhaps of even greater size and traffic volume.

If this commercial zone expansion is allowed, the Mexican government will have no reason to negotiate an equitable treaty allowing the free flow of both U.S. and Mexican trucks across the border. We request the Congress to express its opposition to the Texas commercial zones.

V. ERISA: RESOLVING THE INDUSTRY'S MULTIEMPLOYER PENSION PLAN PROBLEM

The problem

The Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), passed shortly after the Motor Carrier Act, requires an employer who withdraws from a union-sponsored, multiemployer pension plan for any reason to pay a withdrawal penalty to the plan. The imposition of withdrawal liability has, for several reasons,

prevented the industry from completely adjusting to the changing conditions resulting from deregulation.

First, for a substantial number of carriers, the sheer amount of withdrawal liability is enormous, exceeding, sometimes by a factor of five, the net worth of the company. A significant number of carriers who wish to go out of business, including many marginal companies, are simply hanging on to avoid huge withdrawal liability assessments.

In a similar manner, mergers, sales, consolidations, and changes in operations have been hindered by withdrawal liability. Companies in the market to purchase new operations are reluctant to do so when they must assume the huge liability of the seller. Changes of operations have also been stymied. A move from one geographic area to another, even short distances or across town, can result in withdrawal liability assessments, even if the employer continues to contribute to a pension plan in its new area.

Thus, the goals of an efficient, streamlined, and healthy trucking industry envisioned by the Motor Carrier Act are being thwarted by the industry's pension problems.

Perhaps of greater importance, new trucking employers are reluctant to join multiemployer plans, thus undermining the funding base on which these plans rely.

A recent study commissioned by ATA and performed by ICF, Inc., an independent consulting firm, documents the strong negative impact withdrawal liability has had on pension plans in the trucking industry. From the end of 1979 to the end of 1983, all trucking industry employment declined approximately 11 percent while active participants in the plans declined 23 percent. While deregulation and the recession in the early 1980s were factors, the study concludes that MPPAA discourages trucking employers from joining multiemployer plans and is one of the major causes for the decline in active participants in the plans. Over $750 million in potential contributions were not made between 1979 and 1984 due to this trend.

These declines portend ominous results:

The cost of funding future benefits will fall on a decreasing number of workers, causing plan contributions from employers to rise.

These increases will raise labor costs for workers in these plans, making their labor less competitive and leading to further disincentives for new employers to join the plans.

The deteriorating financial condition of the plans in the long run may jeopardize the benefit security of plan participants.

Resolving the problem

Congress recognized the need for a special trucking industry exemption from withdrawal liability when it passed MPPAA in 1980. Unfortunately, the trucking industry rule in the law has proved unworkable. Few plans are covered by the exemption and employers must post security equal to half their potential liability in order to avoid a withdrawal penalty.

The resolution of this problem should address the interests of companies desiring to leave the industry or change business operations and those companies remaining in the plans. We have worked hard, but so far unsuccessfully, for a better exemption from MPPAA's withdrawal provisions, similar to current construction and entertainment industry exemptions. Such an improvement would resolve withdrawal liability problems for companies which go out of business or move to a different geographic location.

The solution to this problem should also include sounder funding requirements to assure the financial stability of the plans. Benefit increases should not be permitted if a plan is in financial trouble, and reasonable limitations should be placed on benefit increases unless a plan is well-funded.

This summer we have reopened discussions with the International Brotherhood of Teamsters to work out a compromise acceptable to all parties. We are committed to resolving the trucking industry's pension problems. Only when those problems are solved will the industry be able to restructure itself in a manner appropriate for our changed regulatory environment.

VI. THE CHALLENGE OF FEDERAL AND STATE TAXES

Tax policies significantly affect the cost of transportation, competitiveness among transport modes, and operational decisions. The full effects of the MCA cannot be judged independently of the dramatic impact of recent tax changes. In the past five years, all motor carriers have shouldered substantial increases in federal income

and highway user taxes, and state taxes, from roughly $5.3 billion in 1979, the year before the Motor Carrier Act was enacted, to approximately $9 billion in 1984.

Federal income tax

The trucking industry has the highest effective corporate income tax rate of any industry. The "Study of 1983 Effective Tax Rates of Selected Large U.S. Corporations" by the staff of the Joint Committee on Taxation showed that the 1980–83 effective tax rate for the five large trucking companies surveyed averaged 38.2 percent. This was more than double the 17 percent average for all industries. It was 16 times greater than the rate paid by the lowest-taxed industry, railroads.

Such an unequal distribution of tax rates puts the trucking industry at a significant disadvantage in competing for funds. That is because lenders and investors prefer to put money into industries that provide the highest after-tax return, all else being equal. The fact that the lowest-taxed industry is our principal competitor for freight adds to the unfairness.

The trucking industry received limited tax benefits from the 1981 tax act. Most trucking assets were already depreciated over relatively short periods. Longer-lived equipment more typical of other industries received substantial reductions in write-off perods. As a result, many industries gained a relative advantage over trucking in competing for capital. Railroads also benefitted from a special provision that allowed them to deduct a large "frozen base" of older property over five years. This made it easier for them to acquire new equipment or charge lower rates and gave them an unfair competitive edge.

These tax changes help explain the poor rate of return on trucking assets in the past several years as noted earlier in this testimony.

For these reasons, we have supported tax proposals that include a maximum corporate tax rate of no more than 33 percent and greater equality among industries. Only after enactment of such a change would the trucking industry be in a position to compete on equal terms for freight and capital as intended by the MCA.

Federal highway taxes

The high operating ratios experienced in the past 2-½ years by the trucking industry are attributable in part to the rapid rise in highway taxes. From fiscal 1982, the last year before passage of the Surface Transportation Assistance Act, to fiscal 1985, the taxes for a typical tractor-semitrailer combination increased from $1,746 to over $4,200. Table 4 lists the various Federal highway user taxes.

TABLE 4.—FEDERAL HIGHWAY TRUCK TAXES

Tax	Rate
Gasoline	9 cents/gallon.
Diesel	15 cents/gallon.
Gasohol	3 cents/gallon.
Tires	0 cents/lb. for first 40 lbs.
	15 cents/lb. for next 30 lbs. plus
	30 cents/lb. for next 20 lbs. plus
	50 cents/lb. for each lb. over 90 lbs.
Truck sales	12% retail price all tractors
	12% retail price trucks over 33,000 lbs. gross vehicle weight (GVW)
	12% retail price trailers over 26,000 lbs. GVW
Heavy vehicle use tax	$0 less than 55,000 lbs. GVW
	$100 plus $22/1,000 lbs., 55,000–75,000 lbs. GVW $550 over 75,000 lbs. GVW.

While the industry believes that all highway users should pay for roads, the sudden, steep increases in highway taxes under STAA as modified by the Deficit Reduction Act of 1984, is another factor that has made adjustment to the MCA more difficult.

This increase in highway costs is aggravated by the exemptions and diversions from the Highway Trust Fund. The gasohol exemption alone reduces annual Trust Fund revenues by $300 million. Tax exemptions for special fuels or vehicles force remaining users to bear a disproportionate share of the highway construction burden. Diversion of funds into mass transit and restrictions on how funds are used single out highway users to pay for nonhighway programs. As a result, motor carri-

ers and their customers are forced to pay more than they should for the highway benefits they receive.

State taxation and regulation

Over the years, the trucking industry and state administrators have worked together to solve problems associated with state taxation of interstate trucking operations. Multistate agreements on vehicle registration and reciprocity, developed jointly by state officials and trucking industry representatives, stand as models of equitable taxation programs.

However, in recent years, this cooperative spirit has diminished as states increased both the level and the types of taxes imposed on the trucking industry. Table 5 lists the three major tax forms and their cumulative effect. These additional taxes have also given rise to an increasing number of forms and procedures with which carriers must comply. Today the trucking industry faces not only a mushrooming state tax burden but escalating compliance costs as well. The U.S. Department of Transportation estimates these compliance costs to be $1 billion annually.

TABLE 5.—STATE HIGHWAY TRUCK TAXES

(For five-axle 78,000 lb. diesel-powered tractor semitrailer)

Registration fees	$35–$2,200 with average $905.
Diesel	7–23 cents/gallon with average 13 cents/gallon.
Third structure taxes	2–8.3 cents/mile with average 4.2 cents/mile.
Total annual State highway user fees.	$1,382–$8,475 with average $3,328.

These new and higher taxes, many of them controversial in their application, have led to a variety of lawsuits in state courts. Within the last five years, the trucking industry has been forced to bring cases in several states, notably Pennyslvania, Arkansas, New Jersey and Indiana, to protect itself from burdensome and unconstitional taxes. Within the same period, the trucking industry has been subject to a host of retaliatory taxes imposed by states on carriers from jurisdictions assessing third-structures taxes. The imposition of these retaliatory taxes has, in turn, given rise to further litigation as affected carriers challenge the constitutionality of retaliatory taxing schemes.

Legal challenges to retaliatory taxes are now pending in Florida, Georgia, Nebraska, Oklahoma, New Jersey, New Hampshire, and Maine. These tax controversies have damaged the state/industry relationship and have also strained relationships among states.

In the last year, the concerns of the industry have finally received a hearing before two bodies of state officials. The National Governors' Association (NGA), in cooperation with the Federal Highway Administration, has established a Working Group on State Truck Issues. The Working Group is to recommend a plan to bring uniformity to widely different tax and registration requirements that states impose on the trucking industry. The Working Group expects to complete its recommendations by July 1, 1986.

Motor carrier members of ATA have participated in the NGA effort and we hope that this study will result in a fundamental change in the way states collect motor carrier taxes.

In the economic regulatory area, the National Association of Regulatory Utility Commissioners has recently proposed to centralize the administration of Public Law 89–170. Public Law 89–170, adopted in 1965, authorizes states to require carriers holding ICC operating authority to register that authority and to identify each vehicle operating under that authority with the state public utility commissions overseeing transportation regulation. We welcome NARUC's recognition of the burdensome nature of the procedures states use to enforce interstate economic regulation. However, the schedule set by NARUC for improvements to this program sets an implementation date of 1988. In the intervening years, the industry will still face unreasonably high regulatory fees as well as continuing compliance difficulties.

We are more concerned than ever before with rampant state taxation and associated administrative requirements. We believe Congress has both the right and the responsibility to insure the trucking industry protection from unreasonable and bur-

densome state taxes. We urge Congress to set out clearly defined guidelines on state taxes which embrace the following general principles:

Highway taxes based on use shall be assessed in fair relationship to the extent of the use;

Highway taxes assessed on a per vehicle basis shall be apportioned;

Highway taxes may not discriminate between interstate and intrastate carriers;

Administrative and regulatory fees shall reflect the cost of issuing the indicia and may not be utilized as a revenue-raising measure; and

Non-highway taxes may not discriminate between motor carriers and other types of interstate business activity.

VII. PRODUCTIVITY IMPROVEMENTS UNDER THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982

The Surface Transportation Assistance Act of 1982 (STAA) promised improved trucking industry productivity by permitting the operation of longer and wider combination vehicles. The trucking industry, however, has not fully realized these productivity benefits because of limitations imposed by a number of states. We strongly urge the Congress and the Department of Transportation to take all actions necessary to enforce the intent of STAA by removing all unnecessary state limitations on productivity.

In addition, the "Bridge Formula" poses restrictions to optimum productivity, handling, and safe operation of certain types of vehicles. ATA through the ATA Foundation is sponsoring research at the University of Maryland Transportation Studies Center which will examine some of these issues on a bridge sampling basis. The Congress has received proposals for comprehensive assessments of these problem areas and we urge that the next federal highway legislation call for a new study of the relationship of trucks and bridges.

Access problems

Several states hav elimited access from the designated system for some or all STAA-approved vehicles to one mile or less, preventing these more productive vehicles from reaching many shippers and receivers. For example, the access limit for Pennsylvania is two-tenths of a mile, except by permit. New York provides 1500 feet, except by permit. Vermont and Virginia allow one-half mile, except by permit. Delaware, New Hampshire, and New Jersey will allow access by permit only. Each of these permits requires a fee; some require roadbed inspection by state and local highway engineers. California and Georgia require signs on the route and California requires the first permit applicant to pay for the highway signs. In New Hampshire, both state and local permits may be required.

In addition, within the past year many local jurisdictions have passed ordinances requiring permits and/or special routing for access to shippers and receivers. More than 100 local ordinance have been enacted in California requiring shippers to pay for route surveys, erection of signs, and even structural roadway changes before access permits will be issued for certain 48-foot semitrailers. A lawsuit instituted by the California Manufacturers Association has temporarily restrained enforcement of these ordinanaces. Local jurisdictions in many other states are now considering similar restrictive actions.

Additionally, several states have thwarted access by designating very limited portions of primary routes for the operation of these productive vehicles. For example, Georgia has designated only 5.5 percent of its non-Interstate primary highways. Coupled with a one-mile access restriction, this means that whole sections of the state are inaccessible to STAA-authorized equipment. It is ironic that STAA, which was intended to promote productivity in interstate commerece, has instead prompted an explosion of new state permits, fees, and restrictive regulations.

Access provisions should be provided for 48-foot semitrailers similar to those recently applied to other commercial vehicles. The Tandem Truck Safety Act of 1984 permitted access by a single 28-foot long 102-inch wide tandem trailer to all points of pickup and delivery, subject to reasonable restructions.

The Congress and DOT should act to assure that all states and localities provide shippers and producers the productivity gains promised by STAA.

Extending productivity benefits

There are several other ways to capitalize on highway improvements to enhance motor carrier productivity. One is to utilize the current Federal Highway Administration review of designated highways with lanes less than 12 feet wide in setting future highway/rehabilitation priorities. Congress demonstrated its intent to en-

courage the use of 102-inch wide vehicles by giving the Secretary of Transportation broad discretion to determine where they can be used. While STAA-authorized vehicles can operate safely on narrower highways, desginated highways with less 12-foot roadways should be given the highest priority for upgrading in the interest of an efficient, interconnected system of roads for freight movement.

In a similar fashion, proposals for a redefined Federal-aid System of Highways of National Significance should include the concept of full access for all STAA-authorized vehicles. This will enhance truck productivity and provide optimum access to modern trucking from all communities served by the system.

Congress should encourage innovative improvements in truck productivity by critically examining DOT's recently submitted report on "The Feasibility of a Nationwide Network for Longer Combination Vehicles." Basically the study presents almost two different reports. The body contains reasonable assessments of the issues which spell out both the pros and cons, as well as the costs and benefits that may be involved with the development of a national network. On the other hand, the Summary of Findings concentrates almost entirely on the negative aspects and includes various subjective conclusions that are not substantiated in the body of the report.

The Congress should consider regional opportunities to establish networks accessible to the most modern truck combination.

VIII. INSURANCE

Since the beginning of the year, newspapers and magazines have been full of stories about companies, including trucking companies, that could not get liability insurance of could only get in at substantially higher prices. Today, increases of 500-600 percent are not unheard of, and 300 percent is commonplace.

The ICC reports that insurance cancellation warning letters and consent agreements continue to increase. By the end of 1985, the ICC estimates that 16,000 warning letters will be sent out, compared to the average annual number of 12,000 since 1980.

More importantly, the Commission has obtained 365 consent agreements with carriers so far this year to cease operations until they get the required insurance. This comparies with only 25 consent agreement in all of fiscal year 1984.

In other words, insurance is becoming a formidable barrier to entry and threatens to be even more restrictive than pre-1980 entry regulation.

Background

The current crisis is an insurance industry crisis that severely impacts the trucking industry. During the early 1980's insurance was a bargain. Underwriters offered low rates because they received very large returns from their investments. When interest rates and investment income fell, undewriters had to reexamine their premium levels. Most found that they did not have sufficient reserves to meet state insurance requirements. During the same period, Congress and the courts were adding to the potential liabilities of insurance companies as damage awards increased far beyond historical costs. As a result, some underwriters are no longer writing motor carrier insurance while other are increasing premiumms at triple-digit rates.

Section 30 of the Motor Carrier Act

Every motor carrier should be required to have adequate insurance coverage. The minimums of $750,000, $1,000,000, and $5,000,000 contained in Section 30 of the MCA are reasonable. In fact, most companies carry greater coverage.

There is not evidence that the minimum insurance requirements imposed by Section 30 of the MCA are having a significant impact on the insurance rates. However, the minimums, coupled with the staggering number of new entrants, are having an impact on the reserve requirements of insurance companies.

Assuming the 12,500 new entrants into the trucking industry since 1980 were required to have $750,000 worth of insurance, underwriters would have to provide $9.4 billion in *new* insurance coverage. Unfortunately, no one in the insurance industry has been able or willing to determine how much of the current rate increases are directly attributable to Section 30 requirements.

Environmental restoration

Change is required in the environmental restoration coverage required by Section 30. Unlike the situation with general liability coverage, which is available but a significantly higher cost to motor carriers, the environmental restoration coverage will, very shortly, be unavailable. Insurance companies have informed many hazard-

ous materials carriers that they will not be able to provide this required coverage after January 1, 1986. Responsible carriers will not transport hazardous materials, including hazardous wastes, without insurance protection.

As a result, Congress will be faced with a crisis comparable to the energy crisis in 1973–74 and 1979; the economy will come to a standstill because gasoline, diesel, and other hazardous materials will no longer delivered. We urge Congress and the Administration to act quickly.

The unwillingness of insurance companies to underwrite this liability is attributable to recent court decisions holding them responsible for the Superfund liabilities of their insureds. The courts have made the insurance companies responsible for events they had not intended to underwrite. Althought none of the cases to date has involved liability arising from the transportation activities of motor carriers, insurance representatives have advised us that the similarity between the language of Section 30 of the MCA and the Superfund Act makes them fearful that the same result will occur under commercial auto insurance policies.

To help solve this crisis, Congress must amend portions of Section 30 dealing with evnvironmental restortion. Such an amendment should clarify that the events for which insurance coverage must be obtained and for which the insurance companies will be responsible are those which are "suddent and accidental."

At the same time, Congress must clarify the scope of motor carrier liability for environmental damages imposed by statutes like Superfund and Clean Water Act. Section 30 only creates the duty of carriers to procure insurance and does not impose a substantive liability on them for environmental damages. Historically, insurance companies have been willing to underwrite coverage for sudden, accidental releases of hazardous materials or wastes into the environment. They are not willing to underwrite liability for non-sudden, non-accidental events. Under the current language of Section 30, it is the latter for which they are finding themselves accountable under recent court decisions.

General solution

As noted earlier, the current crisis in isurance is not limited to the trucking industry. Thus, a few changes in motor carrier requirements will not address the scale of the problem or change its severity. We urge Congress to investigate the crisis in full. Among the areas to be considered should be the heavy reliance of the domestic insurance companies on foreign reinsurance markets; the new legal theories of liability being established and imposed by the courts; the size of damage awards; the use of contingency fee compensation by plaintiffs' attorney; limits to product liability; and the statutes of limitations governing the presentation and prosecution of claims. Perhaps a solution can be found in language similar to that being proposed in S. 100, to provide uniform product liability law.

Finally, ATA has petitioned the Interstate Commerce Commission to investigate the insurance crisis. In a petition filed August 21, 1985, ATA asked the ICC to institute an investigatory rulemaking into the causes and effects of the current insurance premium rate increases. We hope that the rulemaking will culminate in the adoption of findings or rules that will assist motor carriers in acquiring or maintaining the required insurance and in controlling the increased costs.

IX. SAFETY

When Congress passed the MCA, it retained the standard that an applicant for operating authority must be fit, willing and able to provide service. Some predicted that the relaxation of entry requirements and of ratemaking would result in safety problems. They were concerned that increased competition, reduced controls and rate cutting would induce motor carriers to defer maintenance and repair of vehicles. They predicted also that truck trips would be stretched out to increase revenues and that driver violations of hours-of-service rules therefore increase.

ATA has monitored the truck accident picture closely in the past five years. Truck accident data from the Bureau of Motor Carrier Safety show a slight increase in truck accidents, injuries and fatalities in 1981, and a decrease in 1982. In 1983 the data show a reduction in truck accidents but an increase in fatalities and injuries. For 1984 it appears that there is a slight increase in accidents, fatalities and injuries but the final figures are not available. The picture is not clear. We have not been able to determine from the data whether or not deregulation has had an ad-

verse effect on safety.[1] We do not know of any data that would show an impact on safety—negative or positive—resulting from deregulation.

TABLE 6.—TRUCK ACCIDENTS

Year	1980	1981	1982	1983
Accidents	31,389	32,306	31,759	31,628
Fatalities	2,528	2,810	2,479	2,528
Injuries	27,149	28,533	25,779	26,692

Source: Bureau of Motor Carrier Safety, Federal Highway Administration, U.S. Department of Transportation.

Important truck safety programs

The existence of many new entrants into the trucking industry since MCA increases the importance of fully utilizing the various safety tools available to the industry. The most important of these focus on drivers: their skills, attitudes, problems and selection. A key to identifying the problem driver is the National Driver Register. Improved driver safety requires that this system be operating as soon as possible, and that the industry have access to information to ensure that only qualified drivers with acceptable records are on the road.

To ensure that safety is not jeopardized in the future, Congress passed a safety fitness requirement in the Motor Carrier Safety Act of 1984. When the safety fitness requirement goes into effect, the primary tool for developing information about the safety fitness of a motor carrier will be the Motor Carrier Safety Assistance Program, which Congress authorized in the Surface Transportation Assistance Act of 1982. This program has resulted in at least 1,000 additional truck safety inspectors and 130,000 additional truck safety inspections annually. It provides Federal funds to the states to enforce Federal truck safety requirements. Eventually it will result in a sophisticated Federal/state communications network that will enable DOT and the ICC to have easy access to information about the safety fitness of almost every motor carrier.

The Assistance Program is entering its third year of a five-year authorization. While authorized for $60 million through the third year, only $36 million has been received to date. To be fully effective, the program should be fully funded. We urge the Congress and the Administration to give the program full funding of $40 million in its fourth year and $50 million in its fifth year.

The program also deserves to be extended well beyond its current authorization because of its great potential for reduction of truck accidents. Such an extension will assure the states that they can establish a complete motor carrier safety enforcement program without fear of Federal financial assistance being withdrawn.

The Motor Carrier Safety Act of 1984 also requires a study of the effectiveness of state efforts to regulate truck safety and a review of state requirements to determine which requirements should be preempted for greater uniformity.

We believe that the safety program established by Congress in the past few years, through the MCA, the STAA and the 1984 Motor Carrier Safety Act, can be effective. But one essential element is missing. That is the delivery system within DOT. We do not believe that DOT is properly organized to get the maximum benefit out of these truck safety laws or deal effectively with motor carrier problems in general.

Industry sponsored safety programs

The trucking industry does not rely solely on laws and regulations to control the safety of truck operations. We have our own safety programs that are highly effective, even though they are voluntary. Our Council of Safety Supervisors has more than 3,000 members in chapters representing states and different types of motor carrier operations such as tank truck carriers, household goods movers, auto transporters and heavy haulers. The Council has developed safety standards for use by fleets in selecting, training and supervising drivers. In addition, it conducts programs to recognize safe drivers and holds safety meetings at truck stops for any

[1] A recent study prepared for the AAA Foundation for Traffic Safety, entitled "Safety Implications of Structural Changes Occurring in the U.S. Motor Carrier Industry," states that changes resulting from deregulation "are threatening the safe operation of motor carrier equipment on the highways and endangering the lives of motorists and truckers alike."

driver who wishes to participate. The Council also operates road patrols and vehicle inspection programs to monitor the condition and operation of trucks.

Our new driver training program is designed to improve driver attitudes and performance. We have initiated a new series of safe driving awards to recognize drivers who have extended safety records, such as one million miles of accident free driving. We will institute a new program to check on the past employment and driving records of new and in-service drivers. And we have initiated a special "safety focus" program that helps management to identify problem areas and deal with them effectively.

X. MOTOR CARRIER ADMINISTRATION

A Motor Carrier Administration within the Department of Transportation is needed to improve safety and to provide clear responsibility and authority for dealing with the nation's largest freight transport mode.

The trucking industry carriers more freight, travels more miles, employs more people, and generates more revenue than any other transport mode. Yet, trucking is the only major mode that has no respresentation within DOT.

The recent appointment of an associate administrator for motor carriers within the federal Highway Administration is a step in the right direction. The creation of this position at this time is a public acknowledgement by DOT that the motor carrier industry has not received the attention it needs and deserves. However, an associate administrator is not enough. Equity demands a full administrator. An industry of the size and importance of trucking deserves nothing less.

A Motor Carrier Administration within DOT is essential to fulfill the purposes of the Department of Transportation Act to:

Develop transportation policy;
Promote international cooperation in transportation;
Foster overall transportation technological development;
Improve transportation safety;
Protect and improve the environment;
Develop improved transportation systems;
Protect consumer interests.

In the past, research, testimony, and policy decisions on such important motor carrier subjects as highway cost allocation, taxes, rate increases, and truck operations have been addressed in DOT persons lacking in expertise about trucking. A Motor Carrier Administration is needed to resolve this serious shortcoming.

A review of studies and projects underway illustrates the immense financial implications for the trucking industry of decision making in which it has no participation. In the vehicle engineering area alone, 24 rulemakings are underway. If all DOT rules were implemented without change, the cost to the industry would be nearly $17 billion (see Table 7, next page). This fact alone suggests the need for a motor carrier administration to manage these effects.

A Motor Carrier Administration within DOT would be relatively small in comparison with other DOT Administrations. It would consolidate personnel and budget from other groups, including the Bureau of Motor Carrier Safety and the Heavy Truck Research Group in the National Highway Traffic Safety Administration.

The benefits of creating a Motor Carrier Administration are safer and more efficient motor carrier operations, administrative cost savings, and improved representation of important trucking issues.

TABLE 7.—*Docket and total cost*

Heavy duty vehicle brakes	[1] $9.2
Commercial vehicle conspicuity	[1] 3.2
Rear view mirror system	[2] 245.0
Truck rear underride protection	[1] 2.8
Splash and spray suppression:	
(New vehicles)	[2] 150–190
(Retrofit)	[2] 1.2

[1] Billion.
[2] Million.

XI. SUMMARY OF ACTIONS REQUESTED BY ATA

Regulation

We ask the Congress to continue periodic oversight hearings on the Motor Carrier Act of 1980. We ask that Congress refrain from any further deregulation, particularly with regard to collective ratemaking.

Data Collection

We ask the Committee to direct the ICC to maintain the uniform system of accounts and to require the submission of data necessary to discharge its duties.

Credit Rules

Congress should encourage the ICC to reopen the proceeding and suspend the new rules.

Commerical Zones on U.S.-Mexico Border

Congress should express its opposition to the petition pending before the ICC to create a four-county commercial zone in Texas adjacent to the Mexican border. This mammoth comercial zone will further the competitive imbalance in favor of Mexican carriers.

State taxation

We urge Congress to set out clearly defined guidelines on state taxes which embrace the following general principles:

Highway taxes based on use shall be assessed in fair relationship to the extent of the use;

Highway taxes assessed on a per vehicle basis shall be apportioned;

Highway taxes may not discriminate between interstate and intrastate carriers;

Administrative and regulatory fees shall reflect the cost of issuing the indicia and may not be utilized as a revenue-raising measure; and

Non-highway taxes may not discriminate between motor carriers and other types of interstate business activity.

Access for vehicles authorized by STAA

We strongly urge the Congress and the Department of Transportation to take all actions necessary to enforce the intent of STAA by removing all unnecessary state limitations on productivity.

We urge Congress to include a new study of the relationship of trucks and bridges in the next federal highway legislation.

Access provisions should be provided for 48-foot semitrailers similar to those recently applied to other commercial vehicles.

The Congress and DOT should act to assure that all states and localities have uniform regulations for service to shippers and producers by STAA-authorized vehicles.

Congress should encourage innovative improvements in truck productivity by critically examining DOT's recently submitted report on "The Feasibility of a Nationwide Network for Longer Combination Vehicles."

The Congress should consider regional opportunities to establish networks accessible to the most modern truck combinations.

Insurance

We urge the Congress to investigate in full the insurance crisis.

Congress should amend Section 30 of the Motor Carrier Act to clarify that the events for which insurance coverage must be obtained and for which insurance companies will be responsibile are those which are "sudden and accidential."

Congress must also clarify the scope of motor carrier liability for environmental damages imposed by statutes like Superfund and Clean Water Act.

Motor Carrier Safety Assistance Program

The Congress and the Administration should authorize full funding for MCSAP at levels of $40 million and $50 million for the fourth and fifth years respectively.

The program also deserves to be extended well beyond its current authorization because of its great potential for reduction of truck accidents.

Motor Carrier Administration

We urge the Congress to establish a Motor Carrier Administration within DOT to effectively manage and coordinate programs and activities affecting motor carriers and to fulfill the purposes of the Department of Transportation Act.

[The following information was subsequently received for the record:]

AMERICAN TRUCKING ASSOCIATIONS, INC.,
Alexandria, VA, October 2, 1985.

Hon. ERNEST F. HOLLINGS,
U.S. Senate, 125 Russell Office Building, Washington, DC.

DEAR SENATOR HOLLINGS: The purpose of this letter is to add to the record the following information that was not included in ATA's September 27 written testimony on deregulation.

The Bureau of Motor Carrier Safety reports that from 1983 to 1984, truck accidents increased 18 percent. That is the highest increase in truck accidents since 1967.

In addition, truck accident related deaths were up 8 percent, 1984 over 1983, while the increase for all motor vehicle related deaths was only 3.9 percent.

Furthermore, truck accident related injuries increased 10.9 percent over the same 1983-84 period.

Sincerely,

THOMAS J. DONOHUE,
President and chief executive officer.

Senator PACKWOOD. Next let's go to a panel of Mr. Johnston, Mr. Middleton, Mr. Granberry, Mr. Harkins, and Ms. Bontz.

Senator Heflin is here and he has to leave for another meeting. He wants to introduce one of our witnesses before he has to go.

Senator Heflin.

STATEMENT OF HON. HOWELL T. HEFLIN, U.S. SENATOR FROM ALABAMA

Senator HEFLIN. Thank you, Mr. Chairman. It is nice to be back with you.

You served as the chairman of this committee when I was a member of it, until the so-called reform of the Senate which I fail to see. I had to give up a committee assignment. I might also observe that you do not look very rested from the August recess. You must have been working at home during that time.

It is with a great deal of pleasure that I appear before this distinguished committee to introduce a fellow Alabamian, Herman Granberry, the president of the Private Carrier Conference of the American Trucking Association. In addition to this post, to which he was elected by his peers, he is a director of transportation for West Point-Pepperell, one of the Nation's largest manufacturers of textiles for the apparel, household and industrial markets. He is also vice president and general manager of West Point-Pepperell Transportation Co., its wholly owned trucking subsidiary.

The Private Carrier Conference, the largest of the 11 conferences affiliated with the American Trucking Association, represents manufacturers, distributors, shippers and receivers who operate trucks as an extension of their primary business endeavors. Private carriers are the dominant sector of the trucking industry today, hauling nearly 60 percent of the Nation's intercity truck ton mileage and operating 6 million vehicles.

Mr. Chairman, you are gathered here today to hear testimony regarding the experience of private carriers under the Motor Carrier Act of 1980, and I can think of few people who would be more helpful than Herman Granberry. He has been working in his capacity with West Point-Pepperell for more than 27 years.

In 1964, Mr. Granberry was made head of West Point-Pepperell's newly formed corporate engineering department. Two years later, management of the company's trucking operations was added to his purview. In 1968, corporate traffic was also added to his responsibilities. Then, in 1971, when these departments were split in another corporate reorganization, he stayed with the trucking and traffic operation area—and his record since then has been one of virtually unparalleled success.

In 1966, when Herman Granberry took control of his corporation's trucking operations, his private truck fleet consisted of 14 tractors and 22 trailers, all operating out of Fairfax, AL. By 1974, that had grown to 103 tractors and 263 trailers. Today, he directs a fleet consisting of 176 tractors and 502 trailers. This fleet operates out of terminals located in Fairfax, AL, Dalton GA, and Lumberton, NC, to serve West Point-Pepperell's approximately 60 plants and shipping points. West Point-Pepperell carries roughly half of the freight for its parent company.

Clearly, Mr. Chairman, Herman Granberry is more than familiar with the problems and difficulties facing private carriers, and how these experiences relate to the Motor Carrier Act of 1980. It is a distinct pleasure for me to be able to introduce him to you.

Thank you, Mr. Chairman.

Senator PACKWOOD. We will take Mr. Granberry in the order that he appears in the witness list. We will start with Mr. Michael O'Connell, who I believe is representing Mr. Johnston, who could not come, is that right?

STATEMENTS OF MICHAEL O'CONNELL, OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION OF AMERICA; JOHN MIDDLETON, CHAIRMAN, LAW COMMITTEE, PRIVATE TRUCK COUNCIL OF AMERICA, INC.; HERMAN GRANBERRY, PRESIDENT, PRIVATE CARRIER CONFERENCE, INC., AMERICAN TRUCKING ASSOCIATIONS, INC.; JAMES C. HARKINS, EXECUTIVE DIRECTOR, REGULAR COMMON CARRIER CONFERENCE, AMERICAN TRUCKING ASSOCIATIONS, INC.; AND RITA BONTZ, PRESIDENT, MARYLAND INDEPENDENT TRUCKERS AND DRIVERS ASSOCIATION, INC.

Mr. O'CONNELL. Mr. Chairman, thank you for affording the association the opportunity to appear today.

I appear on behalf of the Owner-Operator Independent Drivers Association of America in place of its president, Jim Johnston, who is unable to attend because of illness.

The Owner-Operator Independent Drivers Association is a national trade association with over 6,000 members. It has members in all States except Hawaii and several of the Canadian provinces. It representations the views of owner-operators at both the State and Federal level. The Motor Carrier Act and future legislation in this area is of great interest and vital importance to members of the association.

The Motor Carrier Act of 1980 has led to reduced dominance of the industry by large carriers, increased opportunities for competition, and growth in the use of small fleets, and especially owner-operators. A recent survey showed that fleets of from one to nine

trucks now account for 40 percent of the total number of class 6, 7, and 8 trucks on the road, and fleets of this size are expected to represent an ever larger share of the total of all over-the-road trucks in the future. A great number of these fleets are owner-operators.

Growth in the use of leased transportation, owner-operators and small fleets indicates that this segment of the industry is both efficient and productive, yet the average income of owner-operators today is less than its level one-third before passage of the Motor Carrier Act.

Our association feels that owner-operators have failed to realize their full potential under the act. We feel that this has occurred as a result of two factors: Remaining economic regulation and excessive and often conflicting State regulations.

In the area of remaining economic regulations, the Owner-Operator Independent Drivers Association has noted and many of its members frequently remind us, that carriers are engaged in intense rate competition in order to build traffic. This unprofitable traffic is often passed through to owner-operators who are forced to bear the brunt of the ratecutting without enjoying the benefits that measured traffic brings to the carriers. Remaining economic regulations inhibit the ability of owner-operators to deal directly with shippers. Thus, even though owner-operators are an efficient segment of the trucking industry, they are not being adequately rewarded for their efficiency, and not enjoying the full benefits possible under the Motor Carrier Act.

A similar situation exists with regard to transportation brokers. Owner-operators are in a difficult position in that they may not easily deal with shippers. As a result, brokers are able to extract a premium for arranging the transportation service. We feel that payment of this fee dilutes the benefits of the Motor Carrier Act to shippers, and reduces the compensation of owner-operators.

There has also been a huge increase in State regulation of trucking activity since passage of the Motor Carrier Act. This has occurred not only in economic regulation, but also in licensing, permitting, safety regulations, truck taxes, fuel taxes and reporting, third structure taxes and bonding requirements. Often, the burden of compliance is the same whether the operator operates 1 or 1,000 trucks. A recent estimate by Arthur D. Little, Inc., placed the compliance costs per truck for small operators at $800. This is not the cost of the taxation permitting, et cetera, but the cost of complying with the requirements of the various States.

In conclusion, our association feels that the true potential of the Motor Carrier Act will not be realized until shippers are allowed to work directly with the providers of transportation, and the conflicting maze of State regulations is dealt with.

We urge the committee to consider legislation which would promote uniform economic regulations, safety standards, taxation and reporting requirements among the States.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF JAMES JOHNSTON, PRESIDENT, OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION OF AMERICA, INC., OVERSIGHT HEARING ON THE MOTOR CARRIER ACT OF 1980

Chairman Packwood and members of the Subcommittee, I am James Johnston, President, Owner-Operator Independent Drivers Association of America, Inc. ("OOIDA" or "Association"). This statement is submitted on behalf of OOIDA and its members.

The Owner-Operator Drivers Association of America is no non-profit corporation incorporated under the laws of the state of Missouri, with its principal place of business in Oak Grove, Missouri. The members of the Association are businessmen who own and operate individual heavy duty trucks and small truck fleets.

The Association is a national trade association with over 6,000 individual members representing the interests of independent owner-operators at both the federal and state levels. The Association has members in all states except Hawaii, and several Canadian provinces. In addition, the organization maintains several programs which provide services to its members.

THE MOTOR CARRIER ACT AND THE OWNER-OPERATOR SEGMENT OF THE INDUSTRY

I appreciate the opportunity to present the views of owner-operators and our Association on the effects of the Motor Carrier Act of 1980 on the trucking industry.

The Motor Carrier Act of 1980 resulted in substantial and sweeping changes in all segments of the truck transportation industry. Passage of the Act has led to reduced dominance of the industry by large regulated carriers, and opened the industry to increased competition. It has also led to increased reliance on individual owner-operators and small fleets.

Since passage of the Act, the number of small truck fleets, as well as the percentage of overall miles traveled with leased transportation, have increased. Consultant Stuart S. MacKay of MacKay & Company (Downers Grove, Il) estimates the there are currently 430,000 fleets in the United States which are composed of 1-9 trucks. These small fleets account for 40% of the total number of class 6, 7 and 8 trucks on the road today. Of the 5.2 million vehicles in these classes, 2.1 million belong to small operators. Mr. MacKay predicted that the share of the total truck population operated by small operators will continue to rise in the future, with a corresponding decline in the relative shares of large operators (over 99 trucks). Owner-operators feel that the rise in numbers of both owner-operators and small truck fleet operators reflects the high productivity, efficiency, lower costs, and customized service avaliable through small carriers.

One would think that with their lower overhead, and greater productivity, owner-operators would have benefited substantially from passage of the motor Carrier Act of 1980. Although the Act significantly enhanced the opportunities for small truck fleet operators to obtain operating authority, most have been slow to avail themselves of this opportunity. Most owner-operators feel frustrated in attempts to get their own operating authority. In order to obtain authority, they must have the support of several shippers. However, in order for shippers to gain experience with them as providers of transportation service, they must be able to haul commodities for them. Of course they are not able to haul commodities without ICC authority. In sum, the eased entry made possible by the Motor Carrier Act has done little to help owner-operators.

While owner-operators are the most efficient and productive segment of the nation's truck transportation industry, the overall industry is in an unhealthy financial condition. While use of owner-operators has increased, owner-operator revenues have declined substantially since passage of the Motor Carrier Act. Since 1978, industry officials estimate that the average income for independent owner-operators has been reduced by approximately one-third. These officials estimate that owner-operators earn approximately $20,000 per year. Wall Street Journal, (July 22, 1985) p. 34. It is the experience of our Association that many owner-operators earn substantially less than this amount.

The present poor condition of the owner-operator segment of the trucking industry is a result of two factors. First, the remaining vestages of economic regulation preclude owner-operators from direct competition for truck traffic. Second, myriad state taxes, safety, registration, permitting and recordkeeping requirements and third impose structure taxes impose a disproportionately large burden on owner-operators.

REMAINING ECONOMIC REGULATION

The owner-operators are a very productive and cost efficient segment of the truck transportation industry. Historically, because it generally deals with shippers only through third parties, such as regulated carriers or transportation brokers, this segment of the industry has not realized its full potential is the transportation industry for shippers. These third parties have caused increased cost to shippers and little or no benefit to the owner-operator who actually performs the transportation service. The vast majority of owner-operators have not obtained their own ICC operating authority. In addition, owner-operators have little or no bargaining power vis-a-vis these third parties.

Since passage of the Motor Carrier Act, regulated carriers have been engaged in intense rate competition. Often, carriers will substantially cut rates to shippers in order to build traffic. These carriers will often route this now unprofitable traffic to owner-operators rather than utilizing their own units. The majority of owner-operator compensation contracts call for payment to owner-operators based on a percentage of the gross line haul revenue. As a result of the increased competition made possible by the Motor Carrier Act, the revenues per load and per mile have declined hence, owner-operator compensation has fallen while the revenue and earnings of carriers remain stable as a result of increased volume. In such cases, it is the owner-operator that makes the lower rate possible. However, he or she enjoys few of the benefits of this increased competition allowed under the Act.

Since passage of the Motor Carrier Act there has been a dramatic expansion in the role of transportation brokers. While it may be argued that brokers have a legitimate role in the truck transportation industry, the current regulatory framework allows them to collect rates for their services which are well in excess of that which would prevail if they were subject to the discipline of the marketplace. This occurs because under current regulations, the transfer of information between the provider of the transportation service and the shipper is inhibited.

The provider of transportation service is often unaware of the actual cost of the service to the shipper. On the other hand, shippers are often unaware of the actual rate paid to the provider of transportation. Brokers are able to use this market imperfection to maximize their own compensation without passing savings back to the shipper. This is possible because the remaining vestages of economic regulation inhibit direct communication between providers of transportation service and shippers.

STATE REGULATION

While the Motor Carrier Act has substantially reduced the regulatory burden at the federal level there has been an overwhelming increase in industry regulation at the state level. These differing, burdensome, and often conflicting state requirements occur in a variety of areas. The areas include truck licensing and permitting, safety regulations, truck and fuel tax collection and reporting. Some state regulations and taxing mechanisms of interstate operations are unrelated to highway use. An example is the recent decision of the state of Idaho to impose an income tax on truckers who are only passing through the state.

Until passage of the Surface Transportation Assistance Act of 1982, state regulations specifying truck weight, length, and width were also in conflict. Even now, the access to and from the designated system is non-existent in some areas. Thus the benefits of the new standards have been less than expected.

The popular perception of owner-operators is that they operate in only a few states. This perception differs substantially from the realities of owner-operator operations. Owner-operators often do not know in what state they will be operating as they must be ready to perform transportation services as dictated by the availability of loads. Therefore, they must be licensed, permitted, and in full compliance with the laws of any state in which they might be required to operate. For a typical owner-operator, this can easily be 25–35 different states.

The paperwork necessary to satisfy state requirements regarding licensing, permitting, fuel taxes, and safety are often the same whether the firm owns 1 or 1,000 trucks. This means that owner-operators must expend substantial efforts to comply with differing state laws, even though they may have only one truck, which operates only occassionally in a given state.

The cost of compliance with these myriad state regulations imposes a disproportionate burden on owner-operators, and small fleet operators. Arthur D. Little, Inc. estimates that the cost of compliance with these regulations is approximately $800 per tractor or single unit truck for fleets of 10 or fewer trucks. The cost of compliance declines dramatically as the size of the fleet increases. For fleets of 1,000 or

more trucks these costs decline to approximately $150–$250 per unit. The Arthur D. Little study concludes: "For the very large carriers, the compliance cost does not represent a significant portion of the overall cost of operation."

The lack of uniformity in the area of fuel tax reporting is but one of several troublesome regulatory areas which confront motor carriers. However, it illustrates the maze of seemingly insignificant requirements which can snare small operators. The reality of the situation is startling since the various states differ in reporting dates, reporting forms, renewal times, computational methods, miscellaneous information required, and refund/credit policies. One member of our Association reports that her fuel permits have eleven differnt renewal dates ranging from February 15 to December 31. In addition, some renewals occur every other year, while renewals in other states fall only on even numbered years!

Vehicle registration is another area where individual state regulations impose a costly burden. A member of our Association reports that registering one truck in two states involves: registration fees, privilege taxes, mileage fees, service fees, a Public Service Commission fee, a reciprocity fee, special fuel permits, posting of two bonds, purchase of a license plate and completion of five required forms. After completion of the required steps, our member had to wait six months "processing time" before she received the permits necessary to begin operations. Ironically, both states are members of the "Uniform Compact on Vehicle Registration," which was established to reduce the number of conflicting requirements!

In fairness, I feel that I should point out that the growing use of the International Registration Plan ("IRP"), has helped to ease the burden of registration. The IRP operates on the concept of base-state reporting and single registration plate. While OOIDA acknowledges the benefits of the IRP, we also note that it has been adopted in only 27 states.

In addition to the cost of compliance, the requirements of several states actually discriminate against small operators. This type of discrimination is perhaps best illustrated by the case of Wyoming. In Wyoming, all truck operators are subject to a bonding requirement of $2,000 per truck. This bond must be posted in advance for each of the first ten trucks in a given fleet. Beyond the tenth truck, no further bonding is required. Similar requirements exist in other states. Systems of this type are clearly biased in favor of larger carriers.

While large carriers maintain substantial staffs to ensure compliance with these requirements, owner-operators are forced to deal withs these forms in addition to performing the actual transportation services. In those cases where staff persons are employed to comply with these requirements, the cost of the staff person adds to the costs of operations without improving the productivity of the transportation service.

CONCLUSION

While the Motor Carrier Act of 1980 has opened substantial opportunities for owner-operators, they are still unable to work directly with slippers. As a result, shippers, and ultimately the consuming public, are still prohibited from enjoying the full benefits of the low costs of operation and high productivity of this small business segment of the transportation industry. The Association feels that shippers and the consuming public will not enjoy the full benefits intended under the Act, and will not until shippers are allowed to work, as a practical matter, more directly with providers of transportation.

Owner-operators and other segments of the trucking industry are also plagued by myriad state regulations which are costly, inefficient and sometimes conflicting. Individual state taxation, licensing, permiting, third structure taxes, and fuel reporting requirements can only be characterized as "out of control". These often onerous requirements, when taken as a whole, impose a substantial burden on interstate commerce. The Association urges this Committee to consider, in an expeditious manner legislation which would deal with this issue.

In conclusion, the trucking industry has witnessed substantial changes since passage of the Motor Carrier Act. However, two factors: remaining economic regulation and the growth of state regulations have hampered the ability of the owner-operator segment of the industry to enjoy the benefits envisioned by its authors.

I appreciate the opportunity to submit the views of the Owner-Operator Independent Drivers Association to this Committee.

The CHAIRMAN. Thank you.

Mr. Middleton.

Mr. MIDDLETON. Mr. Chairman, my name is John Middleton. I am corporate manager for distribution services for Hoover Univer-

sal, Inc., in Georgetown, KY, and a member of the board of directors and chairman of the Law Committee of the Private Truck Council of America. I am representing the Private Truck Council of America today.

We appreciate the opportunity to apprise the subcommittee of how the reforms of the Motor Carrier Act of 1980 continue to enhance productivity for private carriers, and we strongly urge the subcommittee to introduce and report out legislation that would complete the deregulation of trucking in America.

Private carriers have seen very positive benefits from the Motor Carrier Act and the new operating options that have become available under it. These options include supplemental for-hire authority to operate in the dual role of a private and common or contract carrier, trip leasing equipment and drivers to regulated for-hire carriers, compensated intercorporate hauling for wholly owned subsidiary members of a corporate family, and leasing of equipment and drivers from a single, unregulated source, referred to as single source leasing.

The benefits these options have provided private carriers include a significant reduction in empty mileage, this documented by A.T. Kearny, Inc.; increased utilization of existing manpower and equipment; and revenue generating opportunities to help assure the economic well-being of many private fleet operations.

At Hoover we have obtained our common carrier authority and engage both in compensated intercorporate hauling and trip leasing. As a result, we have seen our empty mileage drop almost 40 percent over the past 2 years and have developed revenue sources critical to the continued economic well-being of our fleet. With all this progress, however, we still have some serious problems.

First, State regulatory practices restrict the use of interstate options at the intrastate level. Thirty-five States prohibit compensated intercorporate hauling. Thirty States prohibit single source leasing. And 43 States regulate entry into the trucking industry, and in most that do, it is difficult or almost impossible to obtain operating authority.

For those of us with both interstate and intrastate operations, it is at best frustrating not to be able to enjoy the interstate gains at the intrastate level, and at worst, some fleets have decided not to use the Federal options available because it would require setting up separate transportation operations to accommodate the differing operating parameters.

Second, nonuniform State taxation is a nightmare for the truck operator and a $1 billion per year administrative burden, this according to an estimate by the Secretary of Transportation. PTCA is now engaged in an aggressive litigation program against discriminatory truck taxes. However, litigation on a State-by-State basis is expensive and inefficient. More important, the vast majority of State truck taxes are not subject to judicial challenge.

The National Governors Association working group is making a good-faith effort to make recommendations for solutions to this problem, but the working group has no implementing authority, and only 12 States are represented on this group. Without congressional action we feel that their efforts will produce little if any tangible results.

PTCA members are shippers as well as providers of trucking services. In both roles we support the elimination of entry restrictions and collective ratemaking at the Federal and State level for the following reasons:

At the Federal level, ICC entry restrictions have become a virtually meaningless shuffling of paper. The current Federal regulatory system, and collective ratemaking in particular, amounts to a subsidy to for-hire carriers. Five years of experience with deregulation under the Motor Carrier Act of 1980 has proven that it works, and the time has come to complete the job.

At Hoover, we have seen a moderation in carrier rate increases. We have seen truckload carrier pricing that reflects the real costs of providing the services requested. And we have seen more service options offered by a greater number of carriers.

At the State level, State restrictions in most cases are more stringent than those of the ICC, which creates two sets of rules for the same basic ballgame. A DOT study of deregulation in Florida and Arizona has shown positive results: better service and lower rates. And this parallels the Federal experience.

Some today are suggesting a Motor Carrier Administration as a solution to our problems. We would support that only in conjunction with total deregulation because we do not want the Department of Transportation to receive ICC entry and ratemaking regulatory functions.

In conclusion, we support and ask for, first, complete motor carrier deregulation at both the Federal and State levels. In conjunction with this, we support the national carrier concept in H.R. 3222 because it looks at the overall operation of the carrier rather than the individual movement. And second, legislation to implement the recommendation of the National Governors' Association Working Group for Uniformity in State Taxation.

Thank you for your time and attention.

[The statement follows:]

STATEMENT OF JOHN MIDDLETON, ON BEHALF OF THE PRIVATE TRUCK COUNCIL OF AMERICA, INC.

Mr. Chairman and members of the subcommittee: My name is John Middleton; I am Corporate Manager of Distribution Services for Hoover Universal, Inc. in Georgetown, Kentucky and a member of the Board of Directors and Chairman of the Law Committee of the Pirvate Truck Council of America, Inc. ("PTCA"). I am representing PTCA and have with me today Richard D. Henderson, PTCA Executive Vice President, and Richard P. Schweitzer, PTCA Legislative Counsel. We appreciate the opportunity to apprise the subcommittee of how the reforms in the Motor Carrier Act of 1980 ("the Act") continue to enhance productivity for private carriers, and we strongly urge the subcommittee to introduce and report out legislation that would complete the deregulation of trucking in America.

PTCA is an independent national organization representing the interests of nontransportation companies that operate private truck fleets. PTCA numbers approxmiatley 1,800 members comprising a cross-section of manufacturing, processing and retailing industries, and including a substantial number of Fortune 500 companies as well as many smaller concerns. Trucks haul over three-quarters of the nation's freight, and private carriage is generally recognized as the largest segment of the trucking industry.

I. PRIVATE FLEET OPERATING STATISTICS

In 1984 private carriers continued the trend of annually operating more miles per vehicle, with fewer empty trailer miles, and for a lower real cost than in the prior year. PTCA asserts that these improvments in operating efficiency are directly re-

lated to private carrier options arising from the Act itself and from decisions of the Interstate Commerce Commission that were made possible by changes in regulatory emphasis developed in the Act.

The following data quantifies the improvements in private carrier productivity. The figures were compiled by A.T. Kearney Management Consultants, Inc. as part of PTCA's annual Private Fleet Cost Index begun in 1981, and reflect tractor-trailer operating statistics for the calendar year noted.

PRIVATE FLEET TRACTOR-TRAILER OPERATING DATA

	1981	1982	1983	1984
Number of fleets participating	177	243	360	439
Number of tractors	7,638	8,969	14,753	16,366
Annual miles per tractor	100,300	91,100	97,000	100,600
Percent empty miles:				
All trailers	22	24	21	21
Dry van trailers	16	19	17	16
Cost per mile:				
Current dollars	$1.25	$1.26	$1.29	$1.32
Constant dollars	$1.25	$1.21	$1.19	$1.19

Private fleets have increased the use of existing equipment and run more efficiently by reducing the percentage of empty miles (dry runs allow the lowest rate of empty mileage because they will more readily carry freight from other sources than, for example, tankers or flatbed trailers). Most significant, the real cost per mile to operate a tractor-trailer in a private fleet has decreased or remained the same in each of the past three years.

Section 4 of the Act amended the National Transportation Policy, codified in 49 U.S.C. § 10101, to include promotion of energy and economic efficiency in truck operations as an objective of federal regulatory policy. The above reductions in empty mileage and real operating costs illustrate quite forcefully that the objectives of the amended National Transportation Policy are being met in the private carrier segment of the industry.

II. USE OF NEW OPERATING OPTIONS BY PRIVATE CARRIERS

The increased cost effectiveness of private fleets is directly related to use of new operating options that are available due to regulatory reforms stemming from the Act. Private carriers now have several methods of eliminating empty miles on return trips, or "backhauls." One is to secure supplemental for-hire authority as a common or contract carrier under the ICC decision in *Toto Purchasing and Supply Co., Inc.*, 128 M.C.C. 873 (1978.[1]

Another is to trip lease equipment and drivers to a regulated for-hire carrier, who uses them to haul freight for some other shipper.[2] Trip leasing allows private carriers to reduce empty mileage without "getting into the trucking business." For private carriers not wanting to expend the managerial resources necessary to solicit freight and settle loss and damage claims for a for-hire operation nor expose the company to additional liability, trip leasing represents a less demanding method of achieving the efficiencies intended in the National Transportation Policy.

Section 9 of the Act allowed a third new option—compensated intercorporated hauling. This provision permits private carriers to haul freight on a compensated basis for other members of a "corporate family," defined as a parent or other subsidiary corporation where all subsidiaries are subject to 100 percent ownership by the parent. Private carriers are now able to organize as separate transportation subsidiaries, operating as an unregulated private carrier when hauling freight for the

[1] Subsequently affirmed by the Commission's policy statement in Ex Parte No. MC-118, "Grant of Motor Carrier Operating to an Applicant Who Intends to Use It Primarily as an Incident to the Carriage of Its Own Goods and Its Own Non-Transportation Business," decided Nov. 20, 1978, affirmed sub nom. *Mercury Motor Express, Inc.*, v. *U.S.A. and ICC*, 648 F.2d 315 (5th Cir. 1981.

[2] "Trip leasing" to regulated carriers is available under the ICC decision in Ex Parte No. MC-43 (Sub-No. 12), "Leasing Rules Modifications," 132 M.C.C. 927 (1982), affirmed sub nom. *Osborne Truck Line and Steel Carriers' Tariff Assn., Inc.* v. *ICC and U.S.A.*, — F.2d — (11th Cir. 1984).

parent or related subsidiary, and operating as a "Toto" for-hire carrier when hauling for other shippers.

Data from the latest A.T. Kearney Private Cost Index indicates that adoption of one or more of these options into private fleet operations can significantly reduce empty mileage. For example, tractor-trailer fleets with Toto for-hire authority and engaging in compensated intercorporated hauling (CIH) averaged 19 percent empty miles, as compared to 21 percent for all fleets. For fleets operating dry van trailers, those with Toto and CIH operations averaged 14.8 empty miles, as opposed to 16 percent overall. And for private fleets that trip leased to for-hire carriers, the empty miles average was 18.5 percent, as opposed to the 21 percent overall figure.

One would assume that these potential productivity gains would make these options popular with private fleet operators, and the following table illustrates the use of these available options by private fleets in 1984:

PERCENTAGE USE OF NEW OPERATING OPTIONS BY PRIVATE FLEETS

[In percent]

	1983	1984
Toto for-hire authority:		
Presently have	19	27
Will apply for	22	20
Compensated intercorporate hauling	45	49
Trip leading to regulated carriers:		
Presently do	[1] N.A.	26
Plan to	N.A.	13
Separate transportation subsidiary	17	17

[1] Trip leasing was not available until February 1984.

Finally, a further regulatory reform allowed private carriers to augment fleet capacity by leading equipment and drivers from a single, unregulated source (e.g., and owner-operator, a leading company, or another private carrier).[3] Previously, if private carriers wanted to lease both vehicles and drivers, they had to arrange for separate leases with truck and driver leasing companies. Single source leasing allows a private carrier to accomodate seasonal fluctuations or irregular increases in demand for fleet services, without additional capital investment, by leading the factor inputs for transportation; leasing from one source rather than two gives private carrier lessees and expanded range of services and greater leverage in negotiating a contract with a lessor.

Data for 1984 shows that 11 percent of private fleets used single source leasing in some form after it became available on April 6. An additional seven percent responding to the Private Fleet Cost Index survey indicated they planned to exercise this option in the future.

However, leases of equipment and drivers to private carriers must have a minimum term of 30 days in order for the resultant transportation to be considered legitimate private carriage. Thus, the current regulatory situation allows legitimate private carriage. Thus, the current regulatory situation allows owner-operators, leasing companies and private carriers to lease drivers and equipment to for-hire carriers for less than 30 days, but to private carriers only for terms of 30 days or longer. This discrepancy deprives private carriers (as both lessors and lessees) of the flexibility necessary to make leasing an efficient tool for private fleet operations.

PCTA has petitioned the ICC to eliminate this 30-day minimum lease term, and the petition was noticed for comment on August 1. Regular route common carriers have opposed this proposal, though, and we expect that a favorable decision from the Commission will be challenged in federal court by the for-hire interests.

III. STATE RESTRICTIONS ON PRIVATE FLEET OPERATING OPTIONS

Even through private carriers have been successful at the federal level in gaining new options for interstate transportation (i.e., trip leasing, single source leasing, compensated intercorporate hauling, *Toto* common or contract authority), these new options are not readily available on an intrastate basis due to intransigent economic

[3] Ex Parte No. MC-122 (Sub-No. 2), "Leasing of Equipment and Drivers to Private Carriers," 132 M.C.C. 756 (1982), aff'd sub nom. *Ryder Truck Lines, Inc.* v. *U.S.A.*, 716 F.2d 1369 (11th Cir. 1983), cert. denied, 52 U.S.L.W. 3715 (Apr. 2, 1984).

regulation at the state level. Some 43 states still regulate entry into the trucking industry and the vast majority of states have not been as liberal as the federal government in amending regulations and policies to make private fleets more productive.

For instance, a large majority of states consider a lease of equipment and drivers to a private carrier, even on a 30-day basis, to be for-hire transportation by the lessor. This precluses the use of single source leasing on an intrastate basis.

The following chart shows the status of single source leasing for intrastate operations. Some 30 states consider such transactions to be illegal for-hire carriage; two states allow single source leasing by a private carrier if the vehicle has a mixed load of interstate and intrastate freight.

INTRASTATE SINGLE SOURCE LEASING

State	Permitted	Not Permitted	Undecided
Alabama		X	
Alaska		X	
Arizona	X		
Arkansas	X		
California		X	
Colorado		X	
Connecticut			X
Delaware	X		
Florida	X		
Georgia		X	
Idaho		X	
Illinois		X	
Indiana	X		
Iowa		X	
Kansas	X		
Kentucky		X	
Louisiana		X	
Maine		X	
Maryland		X	
Massachusetts		X	
Michigan	Mixed loads permitted; purely intrastate movement prohibited		
Minnesota		X	
Mississippi		X	
Missouri	X		
Montana	X		
Nebraska	X		
Nevada		X	
New Hampshire	X		
New Jersey	X		
New Mexico		X	
New York		X	
North Carolina		X	
North Dakota	X		
Ohio		X	
Oklahoma		X	
Oregon		X	
Pennsylvania		X	
Rhode Island		X	
South Carolina		X	
South Dakota	X		
Tennessee	X		
Texas		X	
Utah		X	
Vermont		X	
Virginia	X		
Washington		X	
West Virginia		X	
Wisconsin	Mixed loads permitted; purely intrastate movement prohibited		
Wyoming	X		

As with single source leasing, most states do not recognize compensated intercorporate hauling (CIH) by a wholly-owned subsidiary as legitimate private carriage. The following chart shows the status of intrastate CIH operations in each state.

INTRASTATE COMPENSATED INTERCORPORATE HAULING

State	Permitted	Not Permitted	Undecided
Alabama		X	
Alaska		X	
Arizona	X		
Arkansas		X	
California	X		
Colorado		X	
Connecticut			X
Delaware	X		
Florida	X		
Georgia		X	
Idaho		X	
Illinois		X	
Indiana		X	
Iowa		X	
Kansas		X	
Kentucky		X	
Louisiana		X	
Maine		X	
Maryland		X	
Massachusetts		X	
Michigan	X		
Minnesota		X	
Mississippi		X	
Missouri		X	
Montana		X	
Nebraska		X	
Nevada	X		
New Hampshire		X	
New Jersey	X		
New Mexico			X
New York		X	
North Carolina		X	
North Dakota	X		
Ohio		X	
Oklahoma		X	
Oregon		X	
Pennsylvania		X	
Rhode Island		X	
South Carolina		X	
South Dakota	X		
Tennessee		X	
Texas	X		
Utah		X	
Vermont	X		
Virginia		X	
Washington		X	
West Virginia		X	
Wisconsin	Mixed loads permitted; purely intrastate movement prohbited		
Wyoming	X		

Differing economic regulation at the state and federal levels means many private fleets are unable to use the federal options because some of their truck operations are intrastate in nature. The choice is either to separate one's fleet into interstate and intrastate sections (an expensive and impractical solution), or to comply with the most restrictive set of regulations applicable to the fleet.

In addition, some states place fees and/or operating restrictions on interstate use of options approved at the federal level. Georgia, for instance, does not recognize compensated intercorporate hauling as legitimate private carriage on an intrastate basis; prior to conducting CIH on an interstate basis, Georgia requires a private carrier to: (1) file a prescribed form requesting a registration permit, and pay a $25 registration fee; (2) submit a copy of the Federal Register notice for the CIH operations published by the ICC; (3) have each of the vehicles engaged in CIH carry this notice; (4) register each vehicle to be operated in Georgia and purchase a $5 identification stamp for each vehicle; and (5) have its liability insurer file evidence of insurance with that state. Only after the private carrier has made these filings and paid these fees, and Georgia has issued the registration permit, may the private carrier conduct exempt CIH through Georgia, even though the private carrier has previously complied with all requirements relating thereto prescribed by the Motor Carrier Act of 1980 and the ICC.

In addition, intrastate common or contract operating authority (as a complement to interstate Toto for-hire authority) is virtually unobtainable in several states due to state regulatory policies that restrict new entry into for-hire markets.[4] Even if a private carrier can get intrastate authority, it may be forced to charge rates established by collective agreement in rate bureaus and enforced by state regulatory utility commissions. Since a private carrier offers for-hire service on a casual or supplemental basis, the market value of its service may be less than the collectively-established rates, but the private carrier is precluded from offering its services at less than the official rate.

For all of these reasons, private carriers are unable to receive the full measure of productivity gains envisioned by the Act and subsequent ICC decisions. In many instances, trucks run empty, fuel is wasted, and consumer costs rise because of a fragmented state regulatory network. The report on uniform state regulations mandated by Section 19 of the Act amply documented the inefficiency resulting from non-uniform economic regulations, but the regulatory structure remains unchanged since the Section 19 report was released over two years ago.

There has been one recent effort to reform the restrictive state regulatory scheme as applied to private carriers. As part of a project to centralize registration of interstate operating authority under Pub. L. 89–170, the National Association of Regulatory Utility Commissioners (NARUC) has drafted a Model Code of State Transportation Regulation. NARUC is comprised of regulatory commissioners from all 50 states and several U.S. territories; the model code is an attempt to unify state regulatory schemes for intrastate traffic using all transportation modes, including trucks.

The first draft of the model code contained provisions permitting compensated intercorporate hauling on an intrastate basis, but prohibiting intrastate single source leasing by private carriers. After several meetings between the NARUC drafters and private carrier and leasing interests (including PTCA), though, it appears that a revised version of the model code will permit intrastate single source leasing.

The model code will be presented to the NARUC Transportation Committee for approval at the NARUC Annual Meeting in November, 1985. However, acceptance of the model code by NARUC has no binding effect on any of the state regulatory commissions; each state must be convinced independently to adopt, via legislation, the new regulatory structure established in the model code.

Also, it appears that the NARUC Transportation Committee is interested in including centralized registration of all interstate private carriers within the overall program for centralized registration of interstate for-hire operating authority. This would require private carriers, for the first time ever, to "register" through a centralized process with the state regulatory utility commission in each state where their trucks operate. Of course, a fee would be charged for this registration process, and the entire program would open the door for greater economic regulatory restrictions on private carrier transportation. This issue will also be discussed, along with the model code, at the November NARUC meeting.

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[4] In Texas, for instance, United Parcel Service has just won a 20-year struggle to secure intrastate operating authority for its package delivery service; rates and routes may still be challenged, however.

IV. NON-UNIFORMITY IN STATE TAXATION

The states have also established a patchwork system of vehicle registration, fuel tax reporting and payment, third structure taxes, retaliatory taxes, reciprocity agreements and apportionment of fees. The Section 19 report illustrated in great detail the overwhelming administrative burden this system places on interstate carriers. The Secretary of Transportation has estimated that carriers spend approximately $1 billion annually just in filling out forms and making the necessary calculations to pay state taxes and fees; this figure does not include the amount of the taxes and fees themselves.

PTCA is now engaged in an aggressive litigation program challenging the constitutionality of state truck taxes that are discriminatorily imposed only on vehicles registered outside the levying state. In August, 1984 the Supreme Court of Indiana upheld a $19 million class action judgment and injunction against the state's indefinite situs property tax on out-of-state trucks.

Since that decision, PTCA has filed suit in eight other states, challenging the constitutionality of discriminatory taxes in each state. The suits all allege that the discrimination against interstate commerce violates the Commerce Clause in Article I, Section 8 of the United States Constitution. See *Maryland* v. *Louisiana*, 451 U.S. 725 (1981); *Complete Auto Transit Inc.* v. *Brady*, 430 U.S. 274 (1977).

Seven of the pending lawsuits challenge the validity of state retaliatory taxes—i.e., state taxes that are selectively applied against vehicles from states that impose additional types of taxes not imposed by the retaliating state. Retaliatory taxes are not enacted to raise revenue for highway fund or even general fund purposes (although, according to state revenue records, they cumulatively raise over $13 million annually), they are levied in an attempt to force repeal of truck taxes imposed in states they are retaliating against.

In response to PTCA's suit, the New Hampshire legislature has repealed that state's retaliatory tax. Also, the Kennebec Superior Court has ruled the Maine retaliatory tax to be unconstitutional. In each case, the litigation continues over the question of refunds of prior retaliatory tax payments made to the state. PTCA expects to complete these cases and receive decisions in the other suits against Georgia, Florida, Louisiana, Nebraska, New Jersey and Oklahoma later this fall.

While we expect to ultimately win each of the above suits, litigation on a state-by-state basis is an extremely expensive and inefficient method of addressing the non-uniformity in state truck taxes. More important, the vast majority of state truck taxes are not subject to judicial challenge—although the cumulative effect of these state taxes is a tremendous administrative burden on interstate carriers, the burden itself is not of constitutional proportion. Thus, a separate forum is needed to begin the task of unifying and simplifying state truck taxes. One such forum has already been established.

With a $783,000 grant from the Federal Highway Administration, the National Governors' Association ("NGA") has embarked on an 18-month program to address the problems of non-uniformity in the types of and procedures for administering state truck taxes and fees. Headed by Warren Dunham, Director of the Iowa Department of Transportation, the working group has a structure and agenda that could provide some relief for interstate carriers.

Comprised of state revenue, motor vehicle, budget, and transportation personnel, with advisory personnel from the motor carrier industry, the NGA Working Group has broken down its task into four major areas of interest: registration fees, fuel taxes, other taxes, and uniformity within a state.

The subgroups are to submit a series of 28 reports through the entire Working Group to FHWA by the project's end in July 1986. The first phase of the project for the Working Group is to identify the conflicting practices within and among states regarding the various taxes and fees, and to determine the impact on such conflicts on state revenue and the burden of compliance on interstate motor carriers. The second phase is to document existing approaches for simplifying and unifying the current tax systems, and to propose an overall, integrated system among and within states to ease administrative burdens on states and interstate carriers.

As the reports now begin to come into the Working Group for review, the magnitude of the different state practices is coming into focus.

The main focus of the registration subgroup is a continued push to have every state join the International Registration Plan (IRP). Currently, 16 states are not IRP members. There is concern among non-IRP states that they may lose revenue if they begin to participate in the plan. Carriers from non-IRP states sometimes oppose IRP participation since out-of-state miles would be prorated for out-of-state registration fees rather than enjoying complete reciprocity.

The fuel tax subgroup is trying to develop a uniform fuel use tax return for use in all the states. The research by this subgroup has documented differences in state fuel tax reporting requirements regarding: report due dates; filing frequency (quarterly, monthly, annually); inclusion of sales tax in fuel tax; rate differentials for different types of fuel; size and types of vehicle required to report; the calculation of miles traveled to determine the tax payable; the method of computing fuel used in the state (miles per gallon or percentage of operations); number of decimal places to be shown in the mpg factor; limits on the carry-over of credits from one reporting period to the next; and proof of payment necessary to secure refund or credit for payment in a reporting period.

The other taxes subgroup is addressing administration of all taxes besides registration and fuel taxes. The subgroup has compiled a set of tables listing the various other taxes that states impose on motor carriers: mileage taxes, operating authority registration fees, weight-distance taxes, highway use equalization taxes, gross ton-mile taxes, property taxes, supplemental highway user fees, ad valorem taxes, alternate mileage fees, trip taxes, axle-mile taxes, axle taxes, gross receipts taxes, interstate motor carrier sales and use taxes, retaliatory taxes, fuel use marker fees, and trip permits for some or all of the above. Interstate carriers must comply with all of the taxes and fees for each state of operation. This list does not even include general business income taxes, franchise taxes, license fees and other generic business taxes that are also payable in each state and many localities.

The uniformity within a state subgroup is attempting to develop a system of "one-stop shopping" for all permits and fees within a single state. The subgroup is implementing a nine-state case study on attempts to centralize motor carrier functions within a state, and is also reviewing the working relationship between agencies within a single state. In most states, registration fees, fuel taxes, third structure taxes, operating authority, and size and weight permits are all administered by a different agencies. Historically, agencies within a state have not attempted to coordinate fee payment practices or schedules for motor carriers.

The NGA Working Group has a final project phase requiring development of promotional and support materials for encouraging state governors, legislators and regulators to adopt the Working Group proposals. In most states, legislative action is necessary to implement the plan. The NGA Working Group is to develop the forms, manuals, guidelines, model legislation, and multistate agreements where necessary to effect adoption by the states.

While the information gathered by the Working Group should continue to provide a clear picture of how the various state taxing mechanisms work, it is unlikely that this group will be able to oversee the implementation of its recommendations for unifying and simplifying the state taxing process. The National Governors' Association itself has called for voluntary resolution of the problems by the states. The governors are interested in pursuing federal government "incentives" (i.e., grant money to implement specific changes), but remain steadfastly opposed to any federal legislation mandating reform of the state tax system.

PTCA, other interest groups, many individual carriers, the NGA staff, and the Working Group members themselves have all spent a considerable amount of time, money and effort to date trying to make this morass of taxes and fees easier for both the carriers to comply with and the states to administer. There has been a good faith effort by the industry and the administrators to make a record and recommendations toward a mutually satisfactory solution. The entire process of meetings and coordinated efforts has also generated a significant amount of good will among the various parties. PTCA does not want to lose the benefit of this work.

Unfortunately, the Working Group will need legislation in virtually every state to enact its recommendations. Even if every state was committed to and actively participating in the Working Group project, this would still require a massive lobbying effort in 50 state capitols. But only 12 states are presently represented on the Working Group. Although the group is soliciting input from agencies in every state, it is likely that those 38 states that have not been a part of the Working Group deliberations will not readily adopt the proposals emanating from the group. In order to keep this project from becoming just another well-meaning but useless study, we need Congressional authority to require state adoption of the recommendations made by this panel of state administrators.

V. NEED FOR FURTHER REGULATORY REFORM

Now that the statutorily required five years of oversight of the Motor Carrier Act of 1980 have elapsed, it is time to evaluate the need for further regulatory reform of the trucking industry at both the federal and state levels. We have attempted to

document how private carriers have benefitted from the reforms developed under the Act for interstate traffic, and how the states have impeded the extension of these benefits to intrastate traffic by restrictive regulatory policy. We have also illustrated the tremendous burden of duplicative state taxes and fees on interstate carriers, and shown that the proposed solution may fail because of the same jurisdictional squabbles among the states that gave rise to this monstrosity of a tax mechanism.

PTCA members, however, are also shippers (and some 27% are for-hire carriers as well). In the role of shippers (and for-hire carriers) PTCA members are interested in seeking elimination of the vestigial entry restrictions and the collective ratemaking processes that remain at the Interstate Commerce Commission.

The ICC entry restrictions have evolved into a virtually meaningless shuffling of paper. Few applications for authority are ever denied, yet the law still requires compliance with a formalized applications process prior to operation as a common or contract carrier. Private carriers who seek to haul freight owned by another company should not have to bother with questions of public convenience and necessity or supporting documents from shippers. As long as the carrier has public liability insurance and complies with the federal motor carrier safety regulations he should be able to haul whatever freight is available without permission from a federal regulatory agency.

In addition, PTCA supports the elimination of antitrust immunity for collective ratemaking. Other witnesses at this hearing will testify about the discounts that have become available because of the new competition resulting from the Act. Single line rates are now deregulated—it is time to complete this task and deregulate all ratemaking activities.

The regulatory system, and collective ratemaking in particular, have served to prop up motor carriers that otherwise would not survive in a free market environment. We fully expect that there will be a shakedown in the for-hire industry if collective ratemaking is ended, just as some carriers have gone bankrupt since the Act was passed in 1980. Yet those well-managed carriers that know (and control) their cost structures, and that offer innovative services supported with state-of-the-art equipment, will thrive in a deregulated marketplace. The motor carrier industry will have to change to survive in a free market, but the change will mean a stronger, more competitive and less expensive transportation system for the American economy.

At the state level, there is even a greater need for federal legislation to eliminate economic regulations. According to the report in the Appendix attached hereto, some 43 states still regulate motor carriers. Of those 43 states, 40 are considered "fully regulated" (strict entry requirements and active protest processes), and 19 grant antitrust immunity for collective ratemaking on intrastate traffic.

The United States Supreme Court has upheld this grant of antitrust immunity under the "state action" doctrine, stating that the federal antitrust laws do not apply to private parties whose conduct is authorized, but not compelled, by the state, provided the state actively supervises the conduct. *Southern Motor Carriers Rate Conference* v. *U.S.*, 53 U.S.L.W. 4422 (March 27, 1985). Thus, in order to bring state ratemaking activity under the authority of Section 1 of the Sherman Act, and thereby return intrastate rates to the forces of the market, state authority to condone collective ratemaking must be preempted. At both the federal and state level, collective ratemaking serves to artificially stimulate transportation costs, and antitrust immunity amounts to a governmental subsidy of the for-hire trucking industry at the expense of shippers and consumers. It is time for trucking to compete like the rest of the economy.

The Department of Transportation commissioned a study on the effects of transportation deregulation on motor carrier service in Florida and Arizona. These two states have recently enacted deregulatory legislation, and it was thought that the experience of shippers and carriers in these states could be used to predict what would happen if state regulation was preempted on a national scale. The results of the study support the theory that deregulation results in substantial benefits for the economy in general:

Deregulation appears to have bestowed upon the Florida shipper/receivers the dual blessings of lower rates and better service. In each year, about a tenth of the respondents indicated declines in overall service, while roughly 30 percent reported improved service . . . The number of shipper/receivers seeing service cutbacks has not risen to 20 percent, while the number receiving offers of new service has been constant at about 60 percent . . .

A majority of shipper/receivers in each year perceived that deregulation held down rates (58 percent in 1981, 50 percent in 1982, and 55 percent in 1984) . . .

The continuing favorable evaluation of deregulation across the three surveys is an important finding. The findings reveal that the quality of service (availability, speed, ease of arranging transportation, etc.) is being maintained or improved, and at reduced rates, for the majority of respondents. These results are particularly impressive as the sample in the second and third years was heavily weighted toward shipper/receivers in outlying areas, which might be expected to receive less favorable treatment in the absence of regulation . . .

As a group, [for-hire] carriers are less favorably disposed toward deregulation . . . [I]n each year, more than 80 percent of the sample reported increased competition. Entry of new or out-of-state carriers, was most often cited as a source of increased competition. This was followed in turn by new competition from warehouse and private fleets, and expanded operations of established in-state carriers . . .

As with Florida, the findings of the two Arizona surveys indicate that shippers/receivers generally favor regulation and expect to realize benefits, while carriers are split, although more carriers preferred deregulation to regulation in the 1984 post-deregulation survey . . .

All of the Arizona results . . . show great shipper/receiver satisfaction . . . Seventy percent noticed increased competition for freight, with 10 percent seeing less competition . . . There are no recorded instances of a shipper reporting a total lack of motor carrier service as a result of deregulation . . .

. . . A plurality [of Arizona motor carriers] (41 percent) support deregulation, with only 33 percent desiring a return to state regulation of trucking. Sixty-nine percent recognize increased competition, and a majority (54 percent) see deregulation exerting a moderating influence on intrastate rate levels in Arizona . . . Fifty-five percent reported offering special deals or discounts, but not a single carrier noted that it was placing less emphasis on small shippers . . .[5]

On the other hand, regulatory commissions in states like Texas still retain a stranglehold over intrastate service and rates. Over the past 40 years, the Railroad Commission of Texas has made one new grant of general commodity common carrier operating authority. Two holding companies, operating five common carriers, have long been the beneficiaries of this regulatory stagnation. In 1983 they controlled 65% of the general commodity intrastate freight hauled in Texas. The top ten general commodity common carriers controlled 97% of the Texas intrastate freight in 1983, up from 94% in 1982.

The results of this market concentration is that intrastate rates in Texas are substantially higher than freight rates for comparable interstate shipments.

The following table was published in the February 19, 1985 edition of The Dallas Morning News:

TRUCKING RATES

Route	cost per truck	number of miles	cost per mile
Shipping costs truckload of corn chips Frito-Lay, Inc.:			
Topeka, KS, to Irving, TX	$708	480	$1.48
Lubbock, TX, to Irving, TX	816	318	2.57
Jackson, MS, to Rosenberg, TX	596	438	1.36
Irving, TX, to Rosenberg, TX	658	275	2.39
Shipping costs truckload of laundry detergent Procter & Gamble Manufacturing Co.:			
Dallas, TX, to Tulsa, OK	375	275	1.36
Dallas, TX, to Houston, TX	612	243	2.52
Dallas, TX, to Albuquerque, NM	995	660	1.51
Dallas, TX, to El Paso, TX	1,275	615	2.07

Sources: Frito-Lay Inc. and Procter & Gamble Manufacturing Inc.

The problem of high intrastate freight costs has become so acute in Texas that shippers have begun hauling freight to points in other states and returning it to points in Texas as a thinly veiled subterfuge to take advantage of interstate rates. Of course, this practice is illegal and has engendered an even stronger enforcement campaign by the Texas regulators.

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[5] Richard Beilock and James Freeman, "The Effects of Transportation Deregulation on Motor Carrier Service in Florida and Arizona," University Research Program, U.S. Department of Transportation, May 1984, pp. 17-28.

The lack of competition means that existing carriers have no incentive to improve service or be innovators in the marketplace. As revenues (and a healthy operating margin) are guaranteed by the regulations, there is no motivation to make the business more responsive to customers' needs. The normal dynamics that force businesses to improve or perish are sorely lacking.

PTCA supports legislation that would end federal and state regulation of motor carriers. We urge this subcommittee to consider the concepts of a "national carrier" and "national private carrier" established in H.R. 3222, the National Motor Carrier Productivity and Safety Improvement Act of 1985. The bill sunsets ICC jurisdiction over trucking, ends the operating authority application process and antitrust immunity for collective ratemaking, and transfers authority for safety fitness and insurance regulation to the Department of Transportation. Carriers operating in three or more states are considered "national" in scope, and are not subject to regulation by any state public utility commission, even for shipments that begin and end in a single state.

The carrier analysis looks at the overall nature of a fleet's operations, rather than a single movement, to determine whether the carrier operates in interstate or intrastate commerce. The carrier analysis eliminates the uncertainty and varying jurisdiction of a movement analysis, and eases the flow of interstate transportation by expanding the basis for federal regulation in an easy-to-identify manner.

When inter- or intra-state jurisdiction is determined by looking at the individual movement, the analysis frequently requires hair-splitting over how long freight sits in a warehouse, or whether the shipper's intent changed during the course of the transportation.

A present ICC proceeding, MC-C-10963, "Armstrong World Industries, Inc.—Transportation Within Texas—A Petition for Declaratory Order," will use this tortured movement analysis to determine if a carrier can haul carpet from Dallas to other points in Texas. Armstrong ships carpet from Georgia to a Dallas warehouse, where it is stored until distributed elsewhere in the state. The carrier hauling out of the warehouse does not have intrastate operating authority (and little chance of securing it under the present regulatory scheme), and has asked the ICC for a declaratory order that this movement is part of a continuous interstate shipment, rather than a separate intrastate movement.

A carrier analysis approach ends the needs for this type of proceeding since it is the carrier's overall operations, and not the specific movement, that determines regulatory jurisdiction. We question what difference it makes whether an imaginary boundary was crossed on a particular trip, especially when the difference may entail almost a doubling of the transportation costs.

PTCA's members are, in general, conservative businessmen who are loathe to invoke the heavy hand of the federal government as a solution to problems in the marketplace. But in this case, the federal government can serve to ease the unnecessary regulatory burden by preempting state authority over much of what is now regulated as intrastate traffic. We need to take steps to integrate our national transportation system, rather than continuing to treat it as 50 separate systems serving 50 separate economies. The restrictive, divergent and often conflicting state regulatory schemes must not be allowed to further impede the flow of interstate commerce.

VI. REFORM OF STATE TRUCK ADMINISTRATION

PTCA supported H.R. 4518, introduced but not passed in the 98th Congress. The bill would have established in the Department of Transportation a working group composed of the Secretary, as a nonvoting member, and state officials representing agencies with expertise in vehicle registration, fuel tax and third structure tax (tax based on weight or distance) practices affecting the trucking industry. The Secretary could have named additional nonvoting members to represent interested parties or perspectives as necessary.

H.R. 4518 provided that the working group would advise, consult with, and make recommendations to the Secretary. The working group would have been authorized to develop and recommend to the Secretary standards for uniform state regulation of interstate motor carriers in regard to vehicle registration, fuel tax, and third structure tax requirements. Topics considered would have included, at a minimum, standardized procedures and forms; base state certification; single state unit for filings, applications, and permits; payment to the base state of fees and taxes due other states; and equitable distribution of revenues. Such standards would not have defined or limited the amounts of any state registration fees, fuel taxes, or third

structure taxes. Nor would standards have stipulated the rates of taxes which the states could impose, or the amount of revenue a state could raise.

Other areas to have been studies were approaches to resolve discrepancies in states' implementation of final standards; identification of permanent bodies to recommend future modification to such standards; and future methods of consultation with public and private interests.

Should the working group have failed to make specific recommendations after 12 months, or should the Secretary not have accepted the working group recommendations, the Secretary would have been empowered to initiate rulemaking on the above topics. Regardless of whether the final rules were based on the working group recommendations, no state would have been able to impose administrative requirements in excess of the standards promulgated by DOT.

The National Governors' Association Working Group on State Motor Carrier Issues, discussed above, has a structure and agenda much like the group envisioned in H.R. 4518. However, the key difference is that the present Working Group has no authority to implment its recommendations

PTCA strongly urges this subcommittee to consider legislation to establish, either by rulemaking or directly through legislation, a mechanism for unifying and simplifying the administration of all state truck taxes and fees. As with economic regulation, the proliferation of unrelated state tax schemes is an unnecessary drain on the productivity of interstate carriers. We do not ask that trucks be excused from paying a fair share of highway use taxes to the state—we simply want a system that makes the payment of these taxes less of an administrative burden.

VII. PROPOSED MOTOR CARRIER ADMINISTRATION

Other trucking interests have proposed establishing a Federal Motor Carrier Administration within the Department of Transportation in order to centralize and coordinate DOT's safety, research and other regulatory activities involving trucks and buses. The belief is that such an agency would provide an advocate for the industry within DOT, or at least a single office where grievances could be filed on any number of issues.

PTCA agrees with the premise that the Federal Highway Administration does not adequately represent the interest of motor carriers. FHWA is interested primarily in protecting and augmenting the Highway Trust Fund for the purpose of building and maintaining the nation's highways, and sees the trucking industry as a key user group for taxation purposes.

In addition, FHWA has never given any real priority to motor carrier safety; the Bureau of Motor Carrier Safety is misplaced in a highway administration. The appointment of a new Association Administrator for Motor Carriers, and the establishment of direct line authority from the BMCS Administrator to the field personnel, are steps in the right direction. Yet the funding, manpower and visibility of safety regulation within DOT must be substantially increased. A Motor Carrier Administration that places a greater emphasis on driver and equipment safety would be welcomed by PTCA.

However, PTCA is absolutely opposed to any retrenchment on economic regulation, and sees the Motor Carrier Administration as a possible threat to the newly won operating freedoms private carriers now enjoy. Should the sunset of the ICC occur in the near future, or members do not want to see any entry restrictions or collective ratemaking procedures simply transferred to a new administration in DOT.

Therefore, PTCA will support the establishment of a Federal Motor Carrier Administration only in conjunction with total deregulation of the trucking industry at the federal level; i.e., elimination of entry rules and antitrust immunity for collective ratemaking, and statutory transfer of authority to the Secretary of Transportation only for enforcing safety and insurance "fitness" requirements. Only in this way will private carriers ensure that re-regulation does not result from this administrative change.

VIII. CONCLUSION

We look forward to the introduction of legislation in the near future that will address many of the issues discussed herein. We stand committed to working for a safer, more productive and less costly motor carrier transportation system.

Thank you for your time.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. In your testimony, you mention the problem created for your members by state regulations. What specific action should Congress take in this area?

Answer. There are several ways to achieve the objective of deregulating what has historically been considered intrastate truck traffic. Each approach requires federal preemption of state authority over rates, routes and service for shipments that begin and end in a single state. However, there is ample precedent for this type of preemptive legislation involving other modes of transportation.

In the Bus Regulatory Reform Act, Pub. L. 97-261, 96 Stat. 1118, Congress established a system whereby a motor carrier of passengers may apply for intrastate authority or rates from a state regulatory commission, and if the application is denied or not acted upon within 120 days, the Interstate Commerce Commission may grant the request if the state rate or practice in effect; 1) causes unreasonable discrimination against interstate commerce; or 2) imposes an unreasonable burden on interstate commerce.

There are several problems with adopting this approach to the trucking industry. First, the procedure is too cumbersome, as it requires a case-by-case determination of the reasonableness of state regulatory practices. A carrier must apply for authority or propose a rate, be denied (or wait 120 days with no action), and then appeal the denial or inaction to the ICC for relief. The ICC is required to take action within 60 days; even if relief is granted, it may entail a six month delay.

Also, there is a different relationship between interstate and intrastate regulations and their effect on rates in the trucking industry than in the bus industry. Section 17(a)(1) of the Bus Act establishes a rebuttable presumption that a state rate or practice imposes an unreasonable burden on interstate commerce if the ICC finds that the rate or practice results in intrastate charges that are lower than interstate charges for comparable transportation of passengers. The problem the Bus Act sought to solve was that of state regulatory practices that forced interstate passengers to subsidize intrastate passengers through higher interstate fares.

In trucking, strict intrastate entry and rate regulation has kept intrastate rates higher, not lower, than interstate rates for comparable traffic. In the bus industry, the state laws were an attempt to protect local bus passengers. In trucking, the regulations protect the profits of locally-domiciled carriers.

Finally, the Bus Act approach will not work in the trucking industry since all proponents of trucking deregulation seem to agree that the ICC should no longer have jurisidiction over trucking. Thus, if a deregulatory bill is enacted, the commission will not be able to serve as an appellate body for decisions of the state commissions. PTCA prefers an approach that eliminates the need for further ICC involvement with motor carriers of property.

In the Airline Deregulation Act, Pub. L. 95-504, 92 Stat. 1707, Section 105 preempted the states from enacting or enforcing any regulation relating to rates, routes or service of any air carrier holding interstate operating authority from the Civil Aeronautics Board (now the Federal Aviation Administration). This is a very broad approach to preemption, completely removing all state regulatory authority over interstate carriers. This approach is also the "cleanest" method of preemption—there is no concurrent state and federal jurisdiction, no distinctions to be made over the interstate or intrastate nature of a particular movement of freight or passengers, and no need for federal agency oversight or review of state agency rules or decisions.

If this approach is used for trucking, however, there may be a problem identifying the interstate carriers since there will be no ICC authority that would serve as the standard for relief from state regulations. A solution might be to require identification of all interstate carriers on the side of the cab. Since the interstate carrier would have to meet federal minimum insurance standards and register the vehicles and secure fuel tax decals in at least two states in order to escape state regulation, there is little chance that a purely intrastate carrier would be willing to face these added costs just to evade state regulations.

The airline approach to preemption is most appealing to PTCA members because it is a "carrier" analysis rather than a "movement" analysis. Individual movements are not scrutinized to determine federal or state regulatory jurisdiction; if a carrier holds interstate authority, it is not subject to state regulation, even for movements that begin and end in a single state. This gives the greatest flexibility for carriers to offer competitive service and rates.

The Staggers Rail Act takes yet another approach to preemption of state regulation. Under Staggers, the ICC certifies the rate standards and procedures that state commissions have in effect over intrastate carriage. The state standards and proce-

dures in order to qualify for ICC certification, must be in accordance with ICC standards and procedures applicable to interstate rail carriers. If a state is denied certification, it may not regulate rates, classifications, or practices involving rail traffic.

The Staggers approach is not applicable to trucking since, if ICC jurisdiction over trucking operations is sunsetted, there will be no federal agency to set national standards for state regulatory practices, and no agency to review and certify state compliance with such standards. This approach imparts uniformity of rules in a loosened regulatory environment. PTCA seeks total deregulation at the federal level and corresponding deregulation at the state level (whether some intrastate traffic will remain under state regulation is subject to negotiation and balancing of state versus federal interests politically as well as legally—but PTCA seeks as much preemption over state authority as is politically attainable).

Another approach to preemption is the "national carrier' concept established in H.R. 3222, the National Motor Carrier Productivity and Safety Inprovement Act. In this system, should a carrier serve or hold itself out to serve three or more contiguous states, the carriers will not be subject to state regulation of rates, routes, and service, even for movements that begin and end in a single state. PTCA has supported the national carrier approach to preemption because:

It allows for sunsetting ICC jurisdiction over truck operations; there is no requirement that the ICC review, oversee or certify state regulatory functions;

It provides for a carrier analysis, rather than a movement analysis to determine federal jurisdiction; and

It broadly preempts state regulation over all operations except those conducted by purely intrastate carriers.

In addition to economic regulations, there are two other areas of state authority that PTCA wants to address through federal deregulation legislation. One involves the administration of state taxes and fees levied on interstate motor carriers; the other is a definition of reasonable access to the national network of routes for larger equipment authorized in the Surface Transportation Assistance Act.

A working group of state tax and regulatory administrators has been meeting under a contract between the National Governors' Association and the Federal Highway Administration to develop recommendations for a simplified and uniform system of state truck tax administration. PTCA members have been advising the various subgroups meeting on this project, and the working group seems to be making legitimate progress towards a better system for both the states and the carriers.

Unfortunately, the working group has no authority to implement its recommendations and the governors have passed a resolution calling for "voluntary" adoption of the group's recommendations by the states. PTCA seeks federal implementation of the working group recommendations, either by statute or through rulemaking in the Department of Transportation. Otherwise, a 50 state lobbying effort will be necessary to derive any benefits from the efforts of the working group.

PTCA also has pending a new position on "reasonable access" to the national route network for longer and wider vehicles. Our Law Committee has recommended to the Board of Directors that PTCA seek a federal minimum definition of reasonable access, stated in terms of miles from the route network. Such a federal definition would permit states to allow more liberal access, and would eliminate the need to engage in definitional arguments over what is a "terminal" for purposes of the access statute.

The federal access definition could provide for more limited access on highways that cannot safely handle the larger equipment, but the burden would be placed on the states to show the road is unsafe in order to exempt it from the mileage limit. This approach expands the access to the national network while still providing an opportunity for the states to keep the larger trucks off highways incapable of handling such traffic.

Question. In your view, does any of the current economic regulation over the trucking industry serve a useful purpose?

Answer. PTCA's Law Committee has also proposed that the Council take a position to support retention of the Carmack Amendment in any deregulation legislation (this proposal, along with the reasonable access proposal, will be brought before the Board of Directors at its November 7 meeting). If the Board approves this proposal, as expected, PTCA would support retention of statutory strict liability for common carriers in matters of freight loss or damage, as codified in 49 U.S.C. 11707. While absolute common carrier liability is well-established in the common law, carriers are more likely to adhere to these positions, and remedies will be more avail-

able in the courts, if the provision remains in the statutes. We do not support any retention of ICC authority to settle disputes in loss and damage areas.

Senator PACKWOOD. Thank you.

Mr. Granberry.

Mr. GRANBERRY. Thank you, Mr. Chairman.

I am Herman Granberry. I am director of transportation for West Point Pepperell, also president of the private carrier conference of the American Trucking Association.

I am appearing today on behalf of the private carrier conference.

The private carrier conference, I would like to point out at the beginning, generally agrees with and supports the position of the ATA on noneconomic issues. At the same time, we firmly and openly disagree whenever their positions support continued economic regulation of the industry, namely, restrictions on entry and antitrust immunity for collective ratemaking.

Members of the private carrier conference of the American Trucking Associations are primarily shippers of their own commodities. However, very few private carriers carry all of their company goods. They also ship by common carrier. Thus, they have a dual role. They are both shippers and carriers. The Motor Carrier Act of 1980 has done much to reduce transportation costs and to improve service by allowing more competition. The result of the Motor Carrier Act of 1980 and its implementation by the ICC has also given the private carrier options including compensated intercorporate hauling single source leasing and trip leasing. The result has been a reduction of empty miles and much more efficient operation.

The ability of the private carrier to obtain supplemental operating authority has also greatly aided in obtaining a better balanced operation at this level.

There are, however, several problem areas remaining. While partial deregulation of interstate trucking has been a big help, we need complete removal of all entry restrictions and removal of antitrust immunity for collective ratemaking. Most States have not followed the lead of the Federal government in the easing of economic regulations. Most States still refuse to allow compensated intercorporate hauling for members of a corporate family; most will not permit single source leasing of both driver and equipment; and do not permit trip leasing by private carriers.

Since most private fleets engage in both interstate and intrastate operations with the same fleet, the same trucks and the same drivers, it makes for a difficult and inefficient operation by having two sets of rules to live by.

The private carrier conference urges removal of the remaining economic regulations at the Federal level as well as Federal preemption of State regulations restricting entry and allowing antitrust immunity for ratemaking.

In summary, the private carrier conference is asking for, one, complete freedom of entry at both the State and Federal levels; two, elimination of antitrust immunity for collective ratemaking at both the State and Federal levels; three, retention of uniform safety insurance, access to the federally funded highways, and uniform size and weight laws at State and Federal levels; and finally a uniform definition of lawful private carriage at both the State and the Federal levels.

There has been quite a bit of contention by some witnesses that ICC has not really followed the intent of Congress as set forth in the MCA of 1980. We urge Congress to act immediately to remove all economic regulation and to remove all doubt as to whether this was done properly or not. This should clarify the issue.

Thank you.

[The statement follows:]

STATEMENT OF HERMAN GRANBERRY, PRESIDENT, PRIVATE CARRIER CONFERENCE, INC. OF THE AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. Chairman and Member of the Subcommittee:

INTRODUCTION

I am Herman Granberry, Director of Transportation for West Point Pepperell, Inc., West Point, Georgia. I am appearing before you today as President of the Private Carrier Conference, Inc. of the American Trucking Associations, Inc. PCC is very grateful for this opportunity to present oversight testimony as it has since 1981 about the experience of private carriers under the Motor Carrier Act of 1980. We are very much aware of the significance of this being the fifth year since the passage on July 1, 1980 and implementation of the Motor Carrier Act of 1980 because the testimony you will receive from various witnesses will no doubt help determine the course of further regulatory reform of the trucking industry. The Private Carrier Conference has given very serious thought to a position for the future with respect to further reform of the trucking industry and will make recommendations with respect to this matter.

There are, however, two points that should be stressed by way of preface. One is philosophical. The other is organizational.

The first is that private carriers are shippers of their own commodities, so they fill the combined role, in this special sense, of both carrier and shipper with respect to those commodities. In doing so, it must be acknowledged that very few private carriers haul all of the freight generated by their corporate organizations. They rely very significantly, sometime primarily, on the for-hire carriers, both common and contract, for fulfilling the rest of their transportation needs. In this sense, private carriers are traditional shippers dealing with traditional for-hire motor carriers. Thus, it is philosophically impossible to separate the reform interests of private carriers from the parallel reform interests of shippers. This linkage will be reflected in the various positions on different issues which will be delineated in this testimony.

Second, and as I believe most of the committee members are aware, the Private Carrier Conference is a separately incorporated organization with its own members, its own board of directors and officers, as well as its own staff. Although it is affiliated with the American Trucking Associations, Inc. and although it is a sister conference to the other "for-hire oriented" conferences of ATA, themselves separately incorporated organizations, the policies and positions advocated by the private Carrier Conference have always been and are now entirely its own. PCC may, therefore, be in agreement with policies of the other conferences and ATA itself—for there are many issues of common concern and perspective to both private and for-hire carriers—or PCC may, depending on the issue, be at variance, slightly or profoundly, with the policies of these other conferences as well as ATA itself. Where there is a variance, close analysis will show that it stems from the shipper orientation of the members of the Private Carrier Conference for whom I am speaking today.

So both of these perspectives—philosophical and organizational—must be acknowledged in order to understand and evaluate the views of the Private Carrier Conference with respect to further motor carrier reform.

STATEMENT OF POLICY

Looking back to the watershed period between July 1, 1980, the date of passage of the Motor Carrier Act of 1980, it is accurate to state that the members of the Conference as private carriers and as shippers have benefited greatly from the reforms enacted at the federal level. Consequently, the Board of Directors of the Private Carrier Conference recently formulated and adopted a Statement of Policy of the Conference which greatly favors further trucking industry reform at the federal level and the initiation of meaningful reform at the state level. A copy of the State-

ment of Policy is attached as Appendix I to this testimony. It is the framework for this testimony. It may be characterized as:

(1) Supporting the elimination of economic entry and rate regulation of the trucking industry at both the state and federal levels as well as

(2) Supporting the elimination at both the state and federal levels of the remnants of antitrust immunity for collective rate making, but

(3) Urging retention of meaningful federal control of size and weight laws, safety and insurance requirements and access to federally supported highways and

(4) Supporting the preservation at the federal and state levels of a uniform definition of lawful private carriage.

In a general and preliminary sense, PCC believes its Statement of Policy adopted on August 21, 1985 by its Board of Directors is broadly consistent with many of the provisions of HR 3222, the National Motor Carrier Productivity and Safety Improvement Act, recently introduced by Congressman Jim Moody of Wisconsin and others. Although PCC has not yet had adequate time to study all of the provisions of this bill and hearings have yet to be held, we commend its basic provisions to your committee for study and evaluation in the context of any future Senate-introduced reform legislation. PCC will, of course, address this and any other reform bills introduced in the House or Senate when hearings on such bills are held. Suffice it to say at this time that we think HR 3222 addresses in a very positive sense many of the remaining problems adversely affecting private carriers and shippers, including a substantial preemption of state economic regulation of the trucking industry.

PREEMPTION OF INCONSISTENT STATE ECONOMIC REGULATION

I would like to call to your attention the need for a substantial federal preemption of inconsistent intrastate economic regulation. Economic regulation of entry and rates of motor carriers at the state level is adversely affecting members of PCC in a number of ways. These will be reviewed.[1]

This is something of a paradox because the need for an adequate federal preemption of inconsistent state economic regulation over the trucking industry, particularly as it affects private carriers, is a direct result of the very benefits bestowed on private carriers since 1980 at the federal level. It is fair to say, as a result of the legislative changes in 1980 and the enlightened implementation of those provisions of the Act which pertain to private carriers by the Interstate Commerce Commission, under the able leadership of Chairman H. Reese Taylor, Jr., that the nation's private carriers are very satisfied with the effects of this legislation.

For example, 10,000 to 12,000 non-transportation corporations that are 100% commonly owned are conducting interstate compensated intercorporate hauling without the necessity of getting any operating authority from the ICC, thereby improving the efficiency of their fleet operations. Private carriers, as buyers of food and grocery products, enjoy the benefit of backhaul allowances given by food and grocery sellers, thereby eliminating many millions of deadhead miles and wasteful fuel expenditures. Thousands of other private carriers have obtained readily available supplemental operating authority from the ICC under the liberal entry policies fostered by the 1980 Act to act as common and contract carriers, thereby greatly enhancing the cost efficiency and fuel economy of their proprietary operations.[2] Still other private carriers are trip leasing their drivers and vehicles to ICC regulated carriers, thereby also eliminating deadhead mileage. Many private carriers haul exempt agricultural commodities on an interstate basis, thereby helping the nation's farmers and further reducing empty miles.

So, indeed, private carriers have benefited tremendously in the past five years from the reduced level of federal regulation of the motor carrier industry. Today, private carrier operations are much more efficient; there is much less empty mileage; just in time inventory flow has improved and transportation costs have been contained with consequent significant benefits to consumers.

Although PCC supports vigorously, as is stated in its Policy Statement, the elimination of entry regulation and other economic rate regulation at the federal level for common and contract carriers as well as the elimination of antitrust immunity

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[1] Intrastate regulation is regarded by private carriers as the second biggest challenge facing them, the first being state and federal taxes. Reference PCC readership survey, The Private Carrier, May, 1985.

[2] A PCC readership survey conducted through the auspices of its official house journal, The Private Carrier, and published in its May 1985 issue, confirms that 22 percent and 33 percent of the private carriers surveyed responded, respectively, to the effect that they either had or were about to get common or contract motor carrier authority from the ICC. Copies of survey are available upon request.

at both the state and federal levels for collective rate making, we do want to focus in some depth on the so-called "preemption" problem because it is particularly acute and is, as has been indicated, frustrating the most efficient implementation of the very options that have so greatly benefited private carriers at the federal level.

OPERATING AUTHORITY

For interstate operations, private carriers are able to obtain from the ICC with comparative ease upon the filing of an appropriate application supplemental common or contract carrier authority to serve other shippers. This greatly reduces empty backhauls and provides new service to unaffiliated shippers who require interstate for-hire carriage service. However, many of the 44 states which still regulate trucking operations do not have the same ease of entry for the granting of common or contract carrier authority to private carriers as does the Interstate Commerce Commission. Bearing in mind that most private fleets are used, virtually daily, on a dual interstate and intrastate basis, this is an acute problem.

In many situations, private carriers cannot get supplemental operating authority as common or contract carriers at the state level parallel to that which they have already obtained at the Federal level. In still other situations, the cost of that authority, the time delay and the controversy engendered discourages private carriers from even attempting to get such authority. This means that the shippers they serve on a supplemental basis are shippers who have only interstate transportation requirements. If other shippers or in fact the same shippers who get interstate service want intrastate service, they cannot get it from the same carrier. This compromises the efficiency that would otherwise be attained by the private carrier through the obtaining of supplemental operating authority, such efficiency being the elimination (1) of an otherwise empty outhaul or backhaul and (2) of the waste of fuel moving an empty vehicle. A partial preemption is needed, therefore, with respect to intrastate authority over such private fleets that are used on a dual interstate/intrastate basis. This is needed whether or not Congress eliminates the vestiges of entry and rate regulation at the Federal level. The effect of such a preemption will give such dual-use carriers the ability to serve shippers on an incidental basis so long as the use of the fleet is substantially interstate in nature. In such context the dual-use carrier would not be subject to state regulatory jurisdiction and thus would not need any state-issued operating authority.

EXEMPT COMMODITIES

At the federal level private carriers are entitled to carry exempt agricultural commodities. The ICC has added to this list in recent years. This facilitates the economies of private carriage operations by permitting private carriers to haul these exempt agricultural commodities. Such hauling also benefits the nation's farmers. However, in many states, there is no comparable exempt commodities list for the intrastate movement of the identical agricultural commodities. So a private carrier that obtains an exempt agricultural commodities load must move it exclusively on an interstate basis in most cases. If the private carrier wants to move the load on an intrastate basis, it would find in many states that the commodities are regulated and that it would need at least contract carrier authority from that state regulatory body in order to effectuate the same movement on an intrastate basis as is otherwise exempt on an interstate basis by virtue of the ICC's exempt commodity list. Sometimes this authority is available; sometimes it is not. Here again efficient use of the dual-use-private fleet is handicapped by state regulation. So a preemption is needed whether or not Congress totally deregulates in an economic sense at the federal level. Why should the movement in the same truck of the same commodities be unregulated at the federal level and regulated at the state level?

TRIP LEASING

On the matter of trip leasing, as previously described, private carriers may trip lease their trucks and drivers to ICC-regulated carriers. This is interstate trip leasing. However, many states prohibit trip leasing by private carriers on an intrastate basis to locally regulated for-hire carriers. Some of these locally regulated carriers also hold ICC authority. Thus, if such is the case, these dual authority carriers, local and federal, could not use any trip leased vehicle for intrastate movements. They would be confined to using the trip leased vehicle and driver obtained from a private carrier for interstate purposes. Since most private fleets are used on a dual interstate/intrastate basis, a preemption is required in this instance from state regulatory prohibitions in order to facilitate efficient trip leasing by private carriers.

FEDERAL/STATE PRIVATE CARRIAGE DEFINITIONAL UNIFORMITY

Another area of concern involves the federal/state relationship as it impacts the definition of a private carrier. Since the original Motor Carrier Act of 1935 was passed by the Congress, a uniform definition of what constitutes private and for-hire motor carriage in different given contexts has been developed by the Interstate Commerce Commission and the federal courts in the last 50 years. The central issue in all cases was to determine definitionally what was private carriage and, therefore, not subject to economic regulation by the Interstate Commerce Commission and what was for-hire carriage (common or contract) and, therefore, subject to the economic regulation both as to entry and rates by the Interstate Commerce Commission.

If economic regulation over entry and rates of the Interstate Commerce Commission with respect to common and contract motor carriage is terminated, this very valuable body of private carriage definitional law could pass into history unless special care is taken to preserve it. Although this development probably would not have too much ill-effect at the interstate or federal level, it could have a very negative, undermining and corrosive effect at the state level as regards what the states, through their regulatory bodies, determine is lawful intrastate private motor carriage and not subject to their regulations and what is for-hire motor carriage subject to their entry and rate regulatory powers.

Since 1935 this federal body of definitional law has had many beneficial effects, one of which has been to stimulate uniformity of classification of private motor and for-hire motor carriage at the state level. In essence, state regulatory bodies, in the common absence of adequate state statutory language, have followed the federal definition, so that we have today, with certain notable exceptions which we will address, uniform agreement of what constitutes unregulated private carriage at the state level among the states and as between the states and the federal level as administered by the Interstate Commerce Commission. Given the dual use of private fleets at the state and federal levels, maintaining definitional uniformity is of critical importance.

If the residual level of entry regulation over common and contract motor carriers by the Interstate Commerce Commission is ended, the definitional distinction between for-hire and private carriage will become moot and thus this painstakingly-achieved private carriage definitional uniformity at the state and federal levels will slowly be compromised by state motor carrier regulatory bodies which have a strong, almost instinctive bias towards limiting competition by maintaining a heavy hand of entry regulation over common and contract carriage. If this occurs, it inevitably will lead to circumscribing or delimiting the hitherto lawful ambit of unregulated private carriage at the state level. This phenomenon would be highly anticompetitive and contrary to the pro-competitive philosophy behind the Motor Carrier Act of 1980.

Some way will have to be found to preserve in an acceptable manner this body of private carriage definitional law at the federal level, the principal motive being to maintain and even enhance the level of uniformity of definition among the states. Here, too, a definitional preemption is in order so as to prevent individual states from using a more circumscribed definition of private carriage. Otherwise, given the tens of thousands of private carriers who, almost daily, use their proprietary fleets interchangeably on both an interstate and intrastate basis, more restrictive state regulatory policy will serve to deny to private carriers the benefits of the very operational freedoms they have won at the federal level and the pro-competitive policy of the 1980 Act will be mocked because state regulatory policy will be free to more narrowly define what is lawful private carriage. The states could then deny to these dual-use private carriers the full range of operational flexibilities and efficiencies achieved since 1935 at the federal level and we would be faced with many situations where a trucking operation is classified as private carriage at the federal level, but as for-hire carriage at the state level.

NOTABLE EXCEPTIONS TO DEFINITIONAL UNIFORMITY—NEED FOR PARTIAL PREEMPTION

At the present time, and despite the high level of uniformity of definition which otherwise exists, there are two significant definitional exceptions that states do not acknowledge as lawful private carriage which greatly burden utilization of proprietary fleets for combined interstate and intrastate use. One relates to compensated intercorporate hauling. The other relates to single-source leasing.

The vast majority of the states regard compensated intercorporate hauling, the transportation by one non-transportation company for a 100 percent commonly-owned corporation, as for-hire carriage, requiring operating authority. In contrast,

CIH is regarded as lawful private carriage at the federal level and requires no operating authority. See attached PCC Survey, Appendix II. At the federal level private carriers may lease their trucks and drivers from a single source. The single source needs no operating authority. Many states forbid single-source leasing to private carriers and regard single-source leasing as a form of for-hire carriage requiring operating authority by the single-source lessor. See attached PCC Survey, Appendix III.

Inasmuch as most proprietary fleets are utilized on a dual interstate and intrastate basis, these two inconsistent state regulatory definitions hobble and often absolutely prevent private carriers from conducting compensated intercorporate hauling and implementing their fleet operations on a single-source lease basis not only for intrastate but even for interstate purposes. Even when private carriage interstate operations are implemented on these bases, intrastate utilization of the same fleets for intercorporate hauling and with respect to single-source leasing is forbidden, thereby compromising the efficiency of the fleet operations.

It will also be vitally important in the context of any further motor carrier reform legislation not only to maintain this federal definitional body of law, but also, by a partial preemption of state regulatory power, to include within such partial preemption both compensated intercorporate hauling and single-source leasing with respect to dual-use private fleets. Then states will not be able to accord compensated intercorporate hauling and single-source leasing a different regulatory status from that recognized at the federal level.

There is, as regards these two concepts, in particular, an inextricable relationship as regards dual-use fleets. It does no good for private carriers who want to implement their proprietary fleet operations on a compensated intercorporate hauling or single-source leasing basis to have the freedom to do as at the federal level if operating requirements dictate they must also use the same fleets on the same basis for secondary but important intrastate operations. Paradoxically, unless this situation is remedied, the heavy hand of state regulation could have the practical effect of denying private carriers who operate such dual-use fleets access to the exercise of these federally-achieved privileges. Some form of partial preemption (or a denial of highway funds) as a remedy for this predicament should be seriously examined in the context of any further motor carrier reform legislation.

PREEMPTION FOR PURELY INTERESTATE PRIVATE CARRIAGE

Even as regards purely interstate private carriage operations, motor carrier reform legislation should also address the matter of negatively preempting the states from reoccupying the federally-abandoned interstate field as regards motor carrier operations. This has particular applicability to interstate private carriage operations. For example, considering a fleet used exclusively by a private carrier for interstate operations, unless there is a federal preemption of this type, the states might try to define to the contrary what historically has constituted interstate unregulated lawful private carriage.

The states could, by way of illustration, seek to determine even as to interstate motor carrier operations by private carriers that single-source leasing and/or compensated intercorporate hauling could no longer be conducted. They might insist, to continue the example, that no compensation be received by a party conducting interstate private carriage operations or that title to goods be a prerequisite to lawful private carriage. Historically, these issues were settled many years ago by the ICC and the federal courts in favor of a broad definition of what constitutes lawful private carriage. So beyond partially preempting intrastate economic regulatory authority with respect to dual-use private fleets, there is the equally significant question of preventing states from reoccupying a federally-abandoned interstate regulatory area. This need will be acute if Congress ends federal economic regulation of for-hire motor carriers.

STATE REGULATORY BIAS

It is very important to realize that, with certain exceptions where total intrastate motor carrier deregulation has occurred, the vast majority of state regulatory bodies generally do not regard as favorable the effects of the Motor Carrier act of 1980. The tendency of these states is to hold the line at the current level of local economic regulation of motor carriage, and this is considerably greater than the level currently exercised by the Interstate Commerce Commission. In view of this state bias towards limiting competition and towards a high level of economic regulation of common and contract motor carriage with a consequent narrowing of the scope of unregulated lawful private carriage, great care will have to be taken in drafting any

further federal motor carrier reform legislation so as to prevent the states from undermining competitive freedoms achieved at the federal level.

NEED FOR FEDERAL PREEMPTION

Quite apart from the issue of further federal level reforms of the trucking industry, clearly, the Congress eventually is going to have to deal with these problems. We do not see how the Congress can allow reforms enacted as a result of the Motor Carrier Act of 1980 that have benefited private carriers at the interstate level to be frustrated at the intrastate level—particularly with regard to the dual use of the same fleet for interstate and intrastate movements. As we view it, therefore, the states that do not go along with the same definition of private carriage or who do not go along with the implementation by private carriers of the same options as have become available at the federal level frustrate and unreasonably burden the efficient movement of traffic private carriers in interstate commerce.

The frustration occurs frequently because these private carriers in many cases foresake the exercise of these federal options where they would not be able to effectuate on a parallel and needed basis with the same truck and driver (certainly the same fleet) the identical kind of transporation service on an intrastate basis. It is becoming clear, therefore, that valuable as the federal options are their full utilization depends on complementary and consistent regulatory freedoms at the state level in those states where such options are not recognized or are frustrated by the "heavy hand" of regulation.

I appreciate that this comes under the heading of "states rights," with all its political sensitivity. Nevertheless, I think the Congress is going to have to be quite forthright about acknowledging these problems and adamant about resolving them. Otherwise, private carriers will be left to the mercies of individual states. PCC thinks that the Congress has the power to preempt inconsistent and burdensome state economic regulation over trucking, particularly that regulation which adversely affects private carriers in the instances just recounted, and that such preemption would be completely consistent with basic constitutional law principles and case precedent. Congress has done it for the airlines, the railroads and bus lines. It is time to do it for dual-use fleets operated by private motor carriers. Intermodal competition and overall operating efficiency demand no less.

Thank you for the opportunity to present this testimony.

[The following information was subsequently received for the record:]

KELLER & HECKMAN,
Washington, DC, October 28, 1985.

Ms. KAREN B. PHILLIPS,
Senate Subcommittee on Surface Transportation,
Hart Building, Washington, DC.

DEAR MS. PHILLIPS: Reference is made to your letter, dated October 8, 1985, addressed to Herman Granberry, President of the Private Carrier Conference, who testified at your recent hearings. As counsel for the Private Carrier Conference, I have been asked to respond inasmuch as Mr. Granberry is not immediately available. As we understand it, you have raised two questions.

First, you would like to know which provision of the Motor Carrier Act of 1980 has proved the most beneficial to the nation's private carriers. This is a difficult question to answer because the backhaul allowance provision, Section 8, has been of great benefit to private carriers in the food and grocery business. Section 9, relating to compensated intercorporate hauling, has also been of great benefit to private carriers. Over ten thousand companies have already notified the ICC that they are participating in compensated intercorporate hauling arrangements between parent and subsidiary operations. On balance, however, our best judgment is that the various provisions of the Motor Carrier Act of 1980 that reverse the burden of proof with respect to making the acquisition of supplemental operating authority, common or contract, more readily available, have proved to be the most beneficial to private carriers.

As best we can judge at the Private Carrier Conference, for the past five years, hundreds if not thousands of private carriers have made a for-hire carrier entry by acquiring common or contract carrier operating authority from the ICC. This authority, almost without exception, is used to supplement ongoing proprietary operations by filling out otherwise empty outhauls or backhauls through service to third parties requiring movement of their own freight. There is no accurate count of the number of private carriers who have obtained these contract and common carriage

authorities from the ICC because the Commission does not keep a separate record of the identity of the parties obtaining operating authority. Nevertheless, and although we cannot quantify it, we believe a significant percentage of the new entry into the for-hire carriage market, particularly the truckload market, is by pre-existing private carriers who have obtained ICC operating authority. This trend is still continuing. At virtually every PCC meeting a show-of-hands survey indicates that about twenty percent of the private carriers have already obtained operating authority and that another twenty percent are in the process of doing so. A recent survey conducted by mail of readers of The Private Carrier, the official magazine of the Private Carrier Conference, confirms the twenty-percent figure with respect to private carriers who have already obtained ICC operating authority.

This is why those provisions relating to the reversal of the burden of proof have proven so important to private carriers. Now and since 1980, they have been able to get common and contract carriage authority, virtually without protest from incumbent and more traditional for-hire carriers. So long as an application is put together correctly, it is usually granted by the Interstate Commerce Commission. This would not be the case if the burden of proof were on such applications as it was prior to 1980. Now the burden of proof is on a potential protestant to show why an application should not be granted, not why it should be granted. The ICC presumes, pursuant to changes brought about by the 1980 Act, that an applicant's proposal is in the public interest. This reversal of the burden of proof from the applicant to the protestant, and the further refinement of who can be a protestant also brought about by the 1980 Act, has made for considerable facility in gaining operating authority and intensifying competition for truckload freight, thereby benefiting shippers whose truckload rates would have been much higher but for these changes in the 1980 Act.

As regards your second question, PCC believes that there should be an across-the-board preemption of inconsistent state economic regulation of the trucking industry. Mr. Granberry detailed the reasons for this in his recent testimony. This was supplemented on September 27, 1985 with the testimony of Robert Delaney, another PCC witness. We do not believe preemption can be effectively achieved on a case-by-case basis. This would be tantamount to a negation of any preemption. It would be a time-consuming, costly and unduly burdensome approach. It would be better to do nothing about preemption at all rather than to establish a case-by-case approach. We think preemption should be tied, however, to a substantial dual-use of a trucking fleet, particularly a private carrier operation. We stressed this in our testimony. With such dual use as a predicate, inconsistent state economic regulation relating to operating authority, the definition of private carriage, single-source leasing, compensated intercorporate hauling, trip leasing and the like, should yield to the parallel interstate use of a proprietary trucking fleet. The only way to do this is for Congress to pass an across-the-board preemption, and not provide for a case-by-case preemption. The latter would be an effective bar to any relief at all by a private carrier with a dual-use fleet who wants to obtain the same operating parameters at the state level that it enjoys at the federal level with respect to interstate operations.

The real dollar issue lies with preemption. Virtually every other change that could be brought about under the heading of motor carrier reform, such as elimination of entry requirements at the federal level, tariff filing requirements and even the elimination of antitrust immunity, would not intensify competition in the marketplace that much. But preemption would and would benefit the nation because it would bring on line additional carriers who could function at the state level as well as the federal level—both in terms of improved service, more attractive rates and other direct benefits to the nation's shippers. The absence of a preemption has proven a geat detriment to the nation's private carriers in the past five years, ironically because of the great benefits they have enjoyed at the interstate level brought about by the Motor Carrier Act of 1980 and its enlightened administration by the Interstate Commerce Commission.

I would be happy to discuss these matters in more detail if you wish.

Very truly yours,

WILLIAM H. BORGHESANI, Jr.

The CHAIRMAN. Thank you.

Mr. Harkins.

Mr. HARKINS. Thank you, Mr. Chairman.

The Regular Common Carrier Conference appreciates the opportunity to provide this subcommittee with an assessment of the last 7 years of substantial regulatory change under the Motor Carrier

Act of 1980 and the policies of the Interstate Commerce Commission.

My remarks pertain to the full service general freight carrier, about 2,500 still remaining, the overwhelming majority of which are very small carriers and who provide the public with less-than-truckload and truckload shipping service between all points in the United States.

We are the industry segment most impacted by existing regulation, and we are the backbone of the for-hire carriers of general freight, producing in excess of 80 percent of the general freight service provided to the public. When the Motor Carrier Act of 1980 was written, we had already been experiencing for more than 2 years administrative deregulation under a series of radical policy changes by the Interstate Commerce Commission. The circumstances were very unsettling, and most interests viewed the regulatory changes of the Motor Carrier Act of 1980 as an honest approach to restore stability and to enable the trucking industry to provide competitive and efficient transportation to the public once again.

Our members endorsed the regulatory revisions of that act, and we still do. However, what we have not gotten and what we still hope for is an administration of that law in a manner consistent with the goals of Congress.

Now, a measure of the results always tells whether or not success has been achieved in reaching the goals of regulatory change. We have certainly experienced the problems of additional influences over the past 7 years, for example, poor economic times and high taxation of the industry. We have also experienced some very dramatic influences as a result of the Interstate Commerce Commission's administration of the Motor Carrier Act of 1980, a more than doubling of the industry's service capacity and very extreme pressures of competition resulting from this expansion coupled with a recession-influenced reduced demand for transportation.

Despite the mix of influences, the period of time for which we have facts, more than 7 years, can tell us much about the way things are working and if the public and the industry are getting better results.

The bottom line answer to that question is no, we are not getting better overall results, and even more importantly, unless something is done soon to put the Commission's administration of the law on course with congressional objectives, the harm being done will be irreparable. In fact, the harm already done to the thousands of bankrupted companies and their more than 125,000 former employees is already irreparable.

The expectations of the Motor Carrier Act of 1980 were a more efficient trucking industry, one that would be healthy, safer, more productive and would provide a better service at lower cost to the shipping public. The written testimony we have submitted provides the factual results of the last 9 years in a way to enable a performance comparison of the general freight carriers for the several years before the Motor Carrier Act of 1980 and since then.

In a nutshell, the general freight carrier results since mid-1980 have been and continue to be less efficient, decidedly less healthy, and unfortunately, less productive. We are hauling substantially

less tonnage, about 38 percent less per year. Compared to pre-1980, the price of our service to shippers has risen by fully 50 percent, and while our total revenues are up almost 8 percent for hauling that less amount of tonnage, our cost increase has been over 10 percent, dropping the industry return on equity to an average of only 8.6, and the operating ratio to a dangerous 97. As well, productivity is also seriously off by approximately 4 percent.

Only a handful of the general freight carriers are earning a reasonable return, and those carriers, when compared with all manufacturing in the United States, these carriers, even our best performers, are barely above average. Not unexpectedly, the results for the first half of this year show that conditions continue to worsen. Tonnage continues to be off, and while revenue is up, the increase in costs continues to outpace that increase in revenue, thereby causing the net margin to fall even lower to the present only 2.2 percent.

Now, a closer look at these results shows the extremely delicate condition of our segment of the industry. Fully 31 percent of the carriers have operating ratios which exceed 100, and 58 percent of the carriers have operating ratios exceeding 97.5, placing all of them in a position for failure in the immediate future.

Now, as of the end of 1984 when the top 10 profitmaking carriers earned 86 percent of the industry profits, that trend continues in the first half of this year, but again, when compared with the rest of American industry, even our top 10 carriers, our very best performers, are just about doing average.

Mr. Chairman, the facts are clear and speak for themselves. The results of the last several years have been quite poor. Nonetheless, we remain convinced that the true objectives of the Motor Carrier Act of 1980 have not been attained, not because of the law itself, but mainly because of the administration of that law by the Interstate Commerce Commission in a way quite inconsistent with congressional objectives.

Our written testimony provides several current examples of this problem, and we will not repeat them here.

Mr. Chairman, the Motor Carrier Act of 1980 has not really been given a fair chance to see if it will improve trucking industry performance. Industry results overall have been quite poor and continue to worsen. We feel an administration of the law in keeping with congressional objectives would change those results for the better. We are also convinced that allowing the Commission to continue to administer the provisions of the new law as they have for the last 5 years frustrates those objectives, and we respectfully request that the subcommittee thoroughly review our testimony and our request for a more active role in the overseeing of the Commission's administrative review of that act.

Thank you.

[The statement follows:]

STATEMENT OF JAMES C. HARKINS, EXECUTIVE DIRECTOR, REGULAR COMMON CARRIER CONFERENCE

My name is James C. Harkins. I am the Executive Director of the Regular Common Carrier Conference (RCCC), a trade association representing the interests of about 2500 motor common carriers of general freight. We thank this Committee

for the opportunity to present our views on the regulatory issues important to the general freight industry.

The RCCC is affiliated with American Trucking Associations, Inc. (ATA). Our membership is the backbone of the regulated for-hire trucking industry. Our members range from nationwide Class I carriers, with over $1 billion in annual revenue, to Class III regional carriers, with less than $1 million in annual revenue. As interstate common carriers, they individually and jointly provide a range of full transportation service to all shippers. The RCCC carriers transport truckload and less-than-truckload shipments between all communities and shippers, large and small, throughout the United States. In 1984, the full service ganeral freight carriers employed approximately a quarter of a million persons, owned more than 100,000 power units, provided more than 60 billion ton-miles of service, and generated over $17.5 billion in gross revenue.[1] This constitutes approximately 85 percent of all trucking workers employed, 70 percent of all trucking ton-miles provided, 83 percent of all trucking power units used, and 82 percent of all revenue generated in the for-hire general freight trucking industry.[2]

The trucking industry continues in a state of instability and rapid change due to influences of the recession and dramatic economic shifts attributable to the Motor Carrier Act of 1980 (MCA 1980) and particularly the roller coaster impact of the ICC administration of that Act.

The RCCC membership strongly supports the position of American Trucking Associations, Inc. (ATA) that in view of such circumstances there be no further deregulation of the trucking industry nor further limitation of existing antitrust immunity for collective ratemaking.

Congress must act:

1. to lessen the excessive burden and anticompetitive impact caused by the extreme level of Federal taxation on trucking;

2. to remove the counterproductive impact on interstate motor carriers caused by conflicting regulations and unreasonable tax schemes;

3. to remedy the lack of proper representation within the Department of Transportation; and

4. to amend multiemployer pension plan laws which are destructive to the future of industry pension plans and presently impose oppressive withdrawal liability burdens, such that many trucking companies continue unprofitable, skeletal trucking businesses rather than cease operations and incur that withdrawal liability.

These are, indeed, critical matters needing Congressional attention. The focus of our presentation will bring attention to the grave financial condition of the full serve general freight carrier industry and policies of the Interstate Commerce Commission (ICC) which we find inconsistent with the intent and spirit of MCA 1980.

THE MOTOR CARRIER ACT OF 1980

When Congress enacted MCA 1980, it carefully reviewed the major aspects of trucking regulation. The resultant compromise legislation was intended to promote the dual goals of "competitive and efficient" transportation which Congress felt were mutually reinforcing objectives.[3] To accomplish these goals, Congress made substantial revisions in several major categories.

First, Congress relaxed, but did not eliminate, the entry standards for common and contract carriers. It eliminated many of the prior restrictions placed on operating authorities which were felt to interfere with efficient transportation. Common carriers are still required to demonstrate that they are "fit, willing, and able" to perform the proposed service and that the proposed service would serve a public need.[4] Congress expressly allowed contract carriers to serve more than eight named shippers when it codified the ICC's decision to eliminate the so-called Rule of Eight.[5] However, such carriers still must meet the distinct service needs of or dedicate equipment to each shipper served under contract.

Second, Congress amended the National Transportation Policy to encourage price and service options, but retained the statutory requirements that rates be set forth

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[1] ATA Financial & Operating Statistics, ICC Tarnsport Statistics, Transportation in America.
[2] ATA Financial & Operating Statistics, ICC Tarnsport Statistics, Transportation in America.
[3] S. Rep. No. 684, 96th Cong. 2d sess. 5 (1980).
[4] 49 U.S.C. 10922(b)(1).
[5] 49 U.S.C. 10102(14)(B).

in tariffs,[6] be reasonable,[7] not be unreasonably discriminatory between shippers,[8] nor destructive to competition.[9]

Third, Congress made numerous changes to the collective ratemaking process. It set forth seven specific requirements which an organization of motor carriers must satisfy in order to obtain ICC approval of a ratemaking agreement.[10] These threshold requirements, among other things, (1) ensure the right of all motor carriers to independently establish rates, (2) restrict voting on rate proposals to only those carriers that can provide service covered by such proposals, (3) bar carrier rate bureaus from filing protests or complaints against any motor carrier rate, (4) prohibit rate bureau employees from proposing or voting on carrier rate changes, and (5) guarantee to everyone the right to attend and participate in all carrier meetings involving rate discussions. Moreover, in January, 1984 Congress phased out the carriers' authority to collectively establish and change limited liability rates. Congress (with general exceptions) also removed from the scope of permitted collective activity single-line ratemaking after July 1, 1984. On the other hand, Congress expressly authorized motor carriers to continue to collectively establish general rate adjustments, joint-line rates, commodity classifications, and rules of general application.[11] With these improvements, Congress recognized the collective ratemaking process to be pro-competitive and helpful to both carriers and shippers in expeditiously establishing and disseminating accurate classifications and rates.

The motor carrier industry supported MCA 1980 as a workable compromise which provided enhanced competition and flexibility within a defined regulatory framework. The RCCC continues to support the statute as written. It is, however, destructive to the intent and objectives of Congress that the ICC is allowed to promulgate policies that effectively destabilize the trucking industry in a seemingly endless pursuit to administratively deregulate the trucking industry. ICC actions have and are contributing substantially to the long term and continuing instability of the industry, thereby playing a large part in causing the extremely poor financial condition of the general freight industry.

THE LAST 7 YEARS

In July of 1980 when the regulatory changes of MCA 1980 went into effect, the industry had for two years already been confronted with the ICC's administrative deregulation. We now have, in effect, the ability to draw some conclusions based on a seven year period of substantial regulatory change—both legislative change, as well as ICC administrative change. The trends remain the same as reported last year and, therefore, the objectives of MCA 1980 become even less attainable:

a. We continue to experience substantial over capacity in the trucking industry. In the late 1970's regulated trucking firms numbered approximately 17,000. ICC data on new entrants over the last seven years indicate that figure has increased to over 40,000 by 1985. As well, the capacity to serve—even allowing for the high rate of bankruptcies—has more than doubled. This, combined with sharp declines in national output and demand for transportation, has produced extreme competition; and actually has been counterproductive since it has created economic waste, and poorer productivity which in turn has produced higher costs and rates overall.

b. This extreme competition has placed enormous pressure on motor carriers to cut costs and, in the case of many, at the expense of safety. In a related matter, motor carriers are experiencing increasing difficulty in purchasing and maintaining insurance as required under MCA 1980. Insurance companies have cancelled policies or are increasing premiums by as much as 400 percent. We call attention to recent investigations by the California Public Utilities Commission involving safety and deregulation. Expert testimony, including comments of the California Highway Patrol, indicates that there is a correlation between excessive competition and a decline in safety. Between 1978 and 1982 there was a steady decline in California's truck related accidents. In 1983 there was an increase, and in 1984 an even more significant increase. Commissioner J.E. Smith of the California Highway Patrol stated that "clearly, truck safety in California is deteriorating at a very rapid pace." (See Exhibits A & B) [12]

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[6] 49 U.S.C. 10761.
[7] 49 U.S.C. 10701.
[8] 49 U.S.C. 10741.
[9] 49 U.S.C. 10101(a)(1).
[10] 49 U.S.C. 10706(b)(3)(B).
[11] 49 U.S.C. 10706(b)(3)(D).
[12] The exhibits were not reproducible and are in the Committee files.

Because of irresponsible ICC laissez-faire policies, the Congressional goal of promoting a safe, sound and efficient transportation system is being undermined.

Competition is a good economic element, but it is not pure in the real world. Encouraged to reach an unhealthy state it becomes destructive and the results are very costly to the economy. Following the advice of the trucking industry, given during Congressional deliberation of MCA 1980, would have produced the better bottom line result. We sought to modernize the entry requirements, to apply them in a reasonable way to meet demand and to promote healthy competition through the improved use of resources.

c. General freight carriers continue to compete fiercely on a price basis for a substantially depressed market of freight transportation. Such fierce competition is further fueled by the demands made by large, economically strong shippers in a buyer's market of over six years duration. Competitive forces and ICC disregard for the law have led to shipper driven prices controlling very large blocks of the nation's regulated freight—prices that are unrelated to costs and produce and anticompetitive influence on the economy in that they favor large manufacturers over small manufacturers thereby reducing the opportunity for smaller manufacturers to effectively compete for markets dominated by the giants. MCA 1980 is designed to enhance price/service competition among carriers in such a way as to produce reasonable and nondiscriminatory transportation to all shippers. Unfortunately, the ICC in its present policy posture has not seen fit to meet its statutory obligations to assure proper application of the law toward Congressional goals of fair competition. Again, better results would be attained for the economy if the regulatory mechanisms to monitor and facilitate public knowledge of price/service availability were properly employed by the ICC.

d. The drastic financial conditions—daily deteriorating—eliminates any hope of attaining the MCA 1980 objective of a healthy, growing general freight industry. Owing to a shrinking market, excessive waste from overcapacity, the resultant sagging productivity and new Federal and state taxes, industry costs have escalated at an ever increasing rate, virtually eliminating any profit. In an unsuccessful attempt to keep pace with these escalating costs, the industry's rate levels have dramatically increased over the past seven years, outpacing the Consumer Price Index, which they traditionally trailed in years prior to 1978 and regulatory change.

There remain over 2,500 general freight carriers—most very small companies. And out of that number, a handful of the larger companies earn a profit. The rest are existing, one way or another. They no longer have the opportunity to earn a profit as before 1978, and we no longer have a healthy industry. By any fair description, we are a financial disaster. We are not growing either. Market share is shrinking and again, only a few companies are showing tonnage gains, but it is not growth. Rather, they are capturing market share of other general freight carriers while industry maket share continues to shrink. These circumstances—financial disaster and shrinking market share—have produced a shattered industry with large numbers on the brink of disaster—hanging on and cutting corners just to live another day—lest ultimate bankruptcy overtakes them and all assets are lost to the pension fund liability requirements of ERISA.

As reported last year, any reasonable and honest evaluation of the results of regulatory change upon the general freight transportation industry over the past seven years has to label them as disastrous. There is a continued waste of resources through grossly excess capacity; there is excess competition which is unhealthy and destructive. Ultimately, it will lead to a reduced quality of competition by virtue of the interaction of these forces causing fewer and fewer carriers to survive. We have lost efficiency and productivity. We are hauling less and less freight and it is costing more and more to do it. We are charging higher and higher rates, yet only a handful are earning any profit at all. The hopes of MCA 1980 have become the haunt of the 1985 general freight industry—not because of MCA 1980, but rather because of the gross misadministration of Congressional objectives by the ICC.

THE STATISTICAL ANALYSIS

To depict the facts which attest to the foregoing, we present herewith the financial and operating data for the general freight carriers over the past seven years. (See Table 19 for carrier list). These data track the general freight carrier performance and present the statistical proof for the above conclusions.

Table 1 [13] shows the first half comparisons for the general freight carriers for the years 1981 through 1985. The composite operating ratio (gross revenue to gross ex-

[13] The tables are in the Committee files.

pense) remains inadequate at 96.3 in 1984, but a closer look in Table 1A indicates the heavy concentration of profitability in a very limited number of carriers. First half 1984 results show that only 59 carriers had operating ratios of 95 or lower. In fact, 59 carriers with operating ratios of over 100 and 42 with ratios of 97.6 to 100 are in disaster. The data for the first half of 1985, while not complete at this date, reflect a worsening of these conditions. The operating ratio has deteriorated to 97. More than 58 percent of the reporting carriers experienced an operating ratio exceeding 97.5—31 percent of which exceed 100 and are likely failures in the immediate future. The results dramatize the precarious financial condition of all but a few carriers. Further, since data for carriers who have gone out of business ar not included, the performance figures overstate the real industry condition. It is significant to point out that all carriers which have ceased operations cannot necessrily be categorized as inefficient—nor can those that survived be acclaimed as the more efficient. An in-depth look into the causes for the shut downs reveals in cases that operational efficiency was unable to cope with the financial staying power of competition in a market of extreme and unhealthy competitive forces. While economic theory suggests that "all things being equal" competition will bring about the survival of the efficient, reality tells us that "all things are never equal" and, further, that efficiency is important, but far from being the sole or even predominant determinant of survival in an imperfect market.

A comparison of 1983 versus 1984 in Table 2 shows:

1984 Revenue up 1.3 percent.

1984 Expense up 1.9 percent.

1984 Gross margin down by 11.4 percent.

1984 Net margin fell from 2.5 percent to 2.2 percent.

1984 Revenue tons down by 4.6 percent.

Of the carriers, 105, or 58 percent, had operating ratios over 97.5 and a composite operating ratio of 101.7. Fifty-seven, or 32 percent, had operating ratios over 100. Conversely, the 10 largest carriers accounted for 52 percent of the revenues and 36 percent of total tons, while the 10 most profitable accounted for 86 percent of the industry profit.

The year 1985, as in 1984, shows a continuing and deepening pattern of industry deterioration, a further consolidation of the dwindling market, and most of the industry profitability being limited to a handful of carriers. In that regard, the poor condition of the trucking operations of these surviving carriers is also understated since net profits shown include earnings from non-trucking activities such as sale of intangibles, interest income and so on. In cases, effective investment of cash flow in other than transportation areas has yielded earnings needed for survival. Of course, that precludes use of such funds for investment in new equipment, maintenance and the like.

Tables 2 through 18 summarize the data for the general freight carriers over the past eight years—1977 through 1985. These data represent more than 80 percent of operations of the more than 2,500 general freight carriers in terms of revenue, income and tonnage.

To portray industry performance before and since MCA 1980, Tables 9 through 18 average the data for 1977 through 1984. The most significant results show that:

Industry tonnage is down 37.7 percent (line 12, Table 12).

Industry cost is up 10 percent (line 2, Table 12).

Industry revenues are up 7.8 percent (line 1, Table 12).

Operating ratio worsened from 95 to 97 (line 21, Table 12).

Operating ratio (excluding the top 10 revenue carriers) worsened from 96.4 to 98.2 (line 21, Table 12).

ROE worsened by 4.6 from 13.2 to 8.6 (line 22, Table 12).

ROE excluding the top 10 profit carriers worsened from 11.5 to 2.1, a drop of 9.4 (line 22, Table 13).

Truckload tonnage is down 46 percent (line 11, Table 12).

Less-Than-Truckload tonnage is down 24 percent (line 10, Table 12).

Briefly, the total freight hauled is 37.7 percent less than pre-MCA 1980; but the cost to transport the almost 38 percent less freight is even higher, by 10 percent, than the pre-1980 cost. In other words, the ton mile cost to shippers has increased dramatically by 50 percent. (Lines 1-16, Table 12).

The picture is clear—with the exception of a handful of carriers (almost exclusively the top 10 profit earners), the general freight industry is closer to the brink of disaster, despite the fact that the country has been experiencing a moderate economic recovery. With no working capital, most of the industry is shut out of purchasing new equipment and forced to operate (cannibalize) outmoded equipment. The safety implications of these circumstances are obvious. Table 15 depicts the av-

erage annual additions of equipment running at $417.4 million during 1977-1979 compared to a disinvestment of $17.6 million since 1980.

Critical to the general freight carriers' ability to compete in the market is the ability to improve on productivity—that is, to get more service for each dollar of cost. In the per-MCA 1980 years, we averaged 91 billion ton miles annually or 291 thousand ton miles per employee. In the post MCA 1980 years, we have averaged 65.4 billion ton miles annually or 279.6 thousand ton miles per employee—a drop of 3.9 percent. (Line 16-17, Table 12). As already mentioned, the ton mile cost to shippers for the same periods rose by 50 percent.

It is unavoidable that such overall and long-term conditions lead to dramatic departures from the industry. It is safe to suggest that with MCA 1980 most people expected there would be some losers and some winners. But no one could have forecasted the dramatic harshness of what has been and continues to go on. Table 8 reasonably demonstrates the impact of those carriers no longer in business. In 1977, those carriers represented annual revenues of almost $4.9 billion (over 41 percent of the industry revenues) and employed more than 126,000 people. The current picture demonstrates that 58 percent of the still surviving carriers with operating ratios exceeding 97.5 are desperately fighting for survival. These carriers account for $5.3 billion or about 38 percent of surviving industry revenues. More than half of these carriers, fifty-seven, have operating ratios over 100 and are likely failures in the near future.

The downward spiral continues and forecasts an early demise for more and more carriers which will hinder the industry's ability to provide the efficient and economical service the economy needs. Long term, a devastating blow will have been dealt to what was the finest, most responsive, most efficient and economical transportation system in the world.

On top of all these problems are the additional burdens influencing management decisions of the surviving carriers—burdens which are of a nature to produce synthetic although real economic barriers to effective carrier response to competitive market forces both from within the industry as well as from competing modes. The ATA testimony documents such matters (tax burden, insurance crisis, ERISA and so on) and they need not be repeated here.

The burden is growing at an out-of-control pace while the industry's ability to support it is quickly shrinking. The candle is burning at both ends, and while giving a bright light—won't last the night!

THE MOST TROUBLESOME CAUSE OF POOR RESULTS FROM MCA 1980

Congress worked hard to produce reform-oriented legislation designed to allow carriers and regulators sufficient and new guidelines, that, properly used, would bring about desired gains in competitiveness; industry health; improved safety; improved productivity; and a return to the pre-1978 stability. That these goals have not been attained is history—but it is important, in considering remedial action, to recognize the most significant cause of the poor results. Congress enacted a well-intended law; carriers and shippers embraced it as a major reform that could work; however, the ICC has utterly failed to administer the reforms in a way to attain its objectives. The misdirection, indecision, contradiction and destructive policies (and non-policies) which have stumbled out of the ICC in the past five years have increased (not reduced) instability; encouraged unhealthy competition; and abetted the industry's descent to financial disaster. Worse yet, such ICC action continues on a wide front and promises even more drastic results.

Despite the plain admonition by the Congress in MCA 1980 to the ICC that they not go beyond the well-defined parameters of the new law,[14] and despite the fact that each year for five years the Congress has conducted oversight (post mortem) hearings that have criticized the ICC, we still find this disconnected group of regulators dealing out confusion and pursuing conflicting policies in a roundtable of internal disagreement. How much longer longer must the industry suffer and how much longer must its customers pay the price of such obstinate misadministration? Immediate remedial action by the Congress is needed. While judicial remedies are available through the court system, as a practical matter, they take too long to be of much use in most cases. We submit the following brief list of cases where the ICC has deliberately and in a disruptive way either gone beyond or threatened going beyond the spirit and intent of MCA 1980:

1. Docket No. 38904, Elimination of Accounting and Reporting Requirements for Motor Carriers of Property;

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[14] Motor Carrier Act of 1980, Pub. L. No. 96-296, Section 3a, 94 Stat. 793 (1980)

2. Ex Parte No. 1, Credit Rules for Motor Carriers;
3. Railroad Acquisitions of Motor Carriers;
4. Contract Carrier Operating Authority To Serve Entire Industries;
5. ICC Failure To Regulate Rates; and
6. Collective Ratemaking.

Needless to say, such matters are most chilling and cause anticipatory carrier management reactions that are counterproductive.

1. Docket No. 38904, Elimination of Accounting and Reporting Requirements for Motor Carriers of Property

In this on-going proceeding, the ICC proposed on February 20, 1985 three major changes in the trucking industry's accounting and reporting requirements. First, it would eliminate the Uniform System of Accounts (USOA) which is a standard industry system used to allocate revenue and expenses and permit comparative analysis through the use of the financial data. Secondly, the ICC is proposing to eliminate the current data reporting requirements for contract carriers and Class II common carriers, (those with annual revenues between $1 and $5 million). Finally, the ICC is proposing to require Class I motor carriers (those with annual revenues over $5 million) to file only a one page barebones report consisting of answers to fifteen questions and eliciting aggregated data on revenue, expenses, and tons carried.

Based on a study being performed by the accounting firm of Arthur Andersen & Co., the trucking industry will submit to the ICC a statement advocating the retention of the USOA and the requirement that Class I and II common carriers, as well as contract carriers, continue to file reports. As a substantial reform, it will be recommended that the current report be reduced to contain only that information necessary for the ICC to meaningfully assess the condition of the industry and discharge its regulatory duties.

Congress, the ICC, other Federal agencies, insurance companies, and the transportation community need accurate, detailed, and timely financial and operating data. In deciding on the terms of MCA 1980, Congress utilized industry data on trucks owned, employment, fuel consumption, assets and revenue of various classes of carriers, and miles traveled, all to provide insight into what legislative changes would make the industry more competitive, efficient, and financially sound.[15] The reports required provide Congress with the timely and accurate data needed at oversight hearings and special inquiries, so as to facilitate informed judgments about the state of the industry.

In addition, the ICC needs such data to perform its legal responsibilities. For example, during the fuel crises of 1974, 1979 and 1981 the ICC needed the specific data on motor carrier fuel costs to determine the level of the emergency surcharge needed. The specific data on revenues and expenses allows it to evaluate requests from motor carriers for general rate adjustments. The data enable the ICC to track, as it must, the impact of regulatory changes on small and minority truckers. It provides a framework to determine when equipment is aging and to what extent that it may pose a safety concern.

In order for the ICC to efficiently and expeditiously perform its statutory duties it needs data which is uniform and provided on a continuing basis. This is clearly evidenced by the present insurance crisis confronting the motor carrier industry. The current reporting requirements provide the ICC with the data to reasonably evaluate the insurance costs of motor carriers and take appropriate action. If the ICC were to adopt its proposal on carrier reporting, it could not meaningfully assess the insurance situation. Even if the ICC could obtain substitute data on an ad hoc basis, the costs and time involved would be substantially more than under the current system and very likely would not be timely enough for the problem.

Other agencies, such as DOT and GAO, also have a need for this data.[16] Indeed, they have expressed concern about the total absence of information on the tremen-

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[15] S. Rep. No. 684, 96th Cong., 2d Sess. 2 (1980), H. R. Rep. No. 1069, 96th Cong. 2d Sess. 2-3 (1980)

[16] DOT Motor Carrier Financial Responsibility Report, May, 1982; DOT Study, "A One Year Assessment of the Motor Carrier Act of 1980: Small Community Trucking Service in Nevada and Oregon," Nov. 30, 1981; DOT Working Paper No. 82-02, "Effect of Regulatory Reform on Motor Carrier Failures: A Preliminary Assessment; DOT National Transportation Statistics Annual Report", September, 1983; "GAO Report to the Congress, The Household Goods Moving Industry: Changes Since Passage of Regulatory Reform Legislation", June, 1983; GAO Report to the Committee on Finance, United States Senate, The Surface Transportation Assistance Act of 1982: Comparative Economic Effects on the Trucking Industry"; Department of Commerce, Bureau of Census," Annual Statistical Abstract of the United States.

dous number of small (Class III) carriers which have annual revenues under $1 million. In 1981, the ICC eliminated the reporting requirements for this large group of carriers.

Motor carriers, commercial shippers, and institutions also use the data to evaluate the performance of the industry and individual motor carriers.

The RCCC urges Congress to endorse, as a reasonable and workable compromise the reporting and accounting requirements proposed by ATA and Arthur Andersen & Co.; and to make clear to the ICC that its proposal is potentially destructive of the ability of Congress and the ICC to properly determine and administer sound transportation policy.

2. Ex Parte No. 1, Credit Rules for Motor Carriers

It is standard practice in the insudtry for motor carriers to extend credit to virtually all shippers. The reasonable extension of credit benefits both carriers and shippers and facilitates the delivery of of goods. Uniform credit rules ensure the statutory goal of preventing unlawful discrimination against shippers. The statute expressly provides for the use of credit and requires the ICC to regulate the payment period and practices.[17]

Prior to the recent changes ordered by the ICC in Ex Parte No. 1, the credit rules authorized motor carriers to extend credit for a uniform period of seven business days. Not permitted were penalties on shippers in the form of interest charges for late payment, nor discounts for early payment.

On May 1, 1985, new credit rules went into effect over the objections of the trucking industry, railroads, the shipping public and bank freight payment plan operators. All affected parties in the transportation community, except the ICC, agree that a uniform, 15 calendar day credit period is proper and necessary to avoid discrimination. Service charges and discounts pose a nightmare in which the administrative costs of such plans outweigh any perceived benefits and only add to carrier capital costs.

Notwithstanding the arguments and concerns of the transportation community, the ICC majority, under a convoluted voting interpretation instituted its own free market philosophy. Its new credit rules allow carriers to establish their own credit period ranging from 1 to 30 calendar days. Service charges and discounts are also authorized.

When the shippers, carriers, and others subsequently petitioned the ICC for reconsideration a second decision was given on May 23, 1985 in which it took "no action," reportedly because the Commissioners, each of whom issued a separate expression, could not reach a majority decision. On June 4, the RCCC petitioned the ICC to clarify this "take no action" decision because a majority of Commissioners apparently had voted to reopen the proceeding and reconsider the questions of the credit period and discounts. Over 90 days later, we still await an ICC response.

The RCCC submits that it not only is unlawful, but also unfair, for the ICC to cavalierly dismiss the credit needs and desires of the shippers, carriers, railroads, and bank plan operators while in pursuit of its misguided philosophy. The new credit rules are costly, burdensome to administer, and impractical. Congress should admonish the ICC to reopen the proceeding and reconsider the suggestions of the transportation community.

3. Railroad Acquisitions of Motor Carriers

Since 1935, the statue has permitted a railroad to acquire and operate a motor carrier only when: (1) it is consistent with the public interest; (2) will enable the railroad to use the motor carrier to public advantage in its operations; and (3) will not unreasonable restrain competition. [18] Last year the ICC eliminated the "special circumstances" doctrine in Ex Parte No. 438.[19] That doctrine required the railroad to use an acquired motor carrier only to perform a service auxiliary to its rail operations, unless it could demonstrate that special circumstances warranted permitting the motor carrier to operate independently of the railroad.

As a result of this decision, two of the nation's largest railroads began acquiring motor carriers. Norfolk Southern Railroad, which had over $3 billion in revenue in 1983, has been granted ICC approval to acquire one of the ten largest motor carriers

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[17] 49 U.S.C. 10743

[18] 49 U.S.C. 11344(c).

[19] Ex Parte No. 438, *"Acquisition of Motor Carriers By Railroad,"* decision served July 27, 1984; appeal dismissed on procedural grounds in *"American Trucking Association, Inc.* v. *United States,* Nos. 84-7545 and 84-7546 (9th Cir. 1985).

in the nation, North American Van Lines, Inc.[20] That decision is now on appeal before the D.C. Circuit Court of Appeals.

More recently, Burlington Northern Railroad (BN), which had revenue of $4.4 billion in 1984, is in the process of acquiring at least four motor carriers.[21] These motor carriers, together, had revenue of $99.66 million in 1984. On July 28th, the ICC served a decision which allows BN to acquire one of these motor carriers, Victory Freightways, without a hearing, without application of the three requirements of Section 11344(c), and without consideration of an important relative to the other three motor carriers which BN is in the process of acquiring. Instead, the ICC exempted BN from the statutory requirements under Section 11343(e). As Chairman Taylor stated, in his dissenting opinion, the legislative history behind Section 11343(e) demonstrates that Congress intended that it be used only for mergers between motor carriers rather than rail acquisitions of motor carriers.

Congress should unequivocably state that the ICC is not empowered under Section 11343(e) to exempt intermodal mergers and that all railroad acquisitions of motor carriers must be processed under Section 11344(c). It is irresponsible for the ICC to grant these pro-forma exemption requests of railroads to acquire motor carriers.

4. Contract Carrier Operation Authority To Serve Entire Industries

In the MCA 1980, Congress determined that contract carriers should be allowed to serve more than eight shippers provided that each shipper either had distinct service needs or wanted dedicated equipment. However, the ICC has taken this liberalization to its illogical extreme.

In Ex Parte 165 (Sub. No. 1),[22] the ICC issued a policy decision which indicated that the type of contract carrier authority it prefers, permits service to entire industries, rather than named shippers. Moreover, the ICC stated that it was not necessary for any shipper to support such authority requests.

As a result, the ICC is daily and indiscriminately granting contract carrier authority to serve "all commercial shippers and receivers of general commodities." Under these open-ended permit, every shipper in the country can be served under one contract authority. Recently, the ICC granted River Bend Transport Co. such a permit, notwithstanding that this contract carrier has a limited amount of equipment, and not a single shipper in support of the application to demonstrate that it has distinct service needs or requires River Bend to dedicate equipment.[23]

Consequently, the RCCC has challenged the River Bend and another decision in court. By the time a court decision is obtained, in perhaps a year and a half, substantial damage will have been done because literally hundreds of such permits are being granted each month. The ICC's apparent strategy is to win the issue by sheer numbers since it is not feasible to challenge each and every grant of authority.

Congress clearly did not intend that contract carriers be authorized to serve each and every conceivable shipper of general commodities. Such a result makes a farce out of the statutory requirement in Section 10923 that the contract carrier be "fit, willing, and able" to provide the proposed service and the definitional requirement in Section 10102(14)(B) that each shipper have distinct service needs or want dedicated equipment. Congress should admonish the ICC that such open-ended permits are rarely, if ever, justified.

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[20] Finance Docket No. 30500, *Norfolk Southern Corporation—Control—North American Van Lines, Inc.*, decision served May 13, 1985; appeal docketed No. 85-1397, *Teamsters* v. *I.C.C. (D.C. Cir., July 9, 1985).*

[21] Docket No. MC-F-16248, *Burlington Northern, Inc.—Control Exemption—Victory Freightway System, Inc.",* Notice served Apr. 22, 1985; Docket No. MC-F-16372, *Burlington Northern, Inc.—Control Exemption—Monkem Company,* Notice served July 2, 1985; Docket No. MC-F-16452, *Burlington Northern, Inc.—Control Exemption—Monroe Trucking, Inc.,* Notice served July 5, 1985. In addition, Burlington Northern has publicly stated it has contracted to acquire a foruth motor carrier, Stoops Express, Inc., See, Traffic World, July 5, 1985, page 47.

[22] Ex Parte No. MC-165 (Sub-No. 1), *Motor Contract Carriers of Property—Proposal to Allow Issuance of Permits Authorizing Industry-Wide Service,* 133 M.C.C. 298 (1983); appeal dismissed on procedural grounds in *American Trucking Associations, Inc.* v. *Interstate Commerce Commission,* 747 F.2d 787 (D.C. Cir. 1984)

[23] Docket No. MC-139243 (Sub-No. 12), *River Bend Transport Company,* decision served Apr. 22. 1985, appeal docketed *Regular Common Carrier Conference* v. *United States,* No. 85-1374 (D.C. Cir. June 20, 1985)

5. ICC Failure to Regulate Rates

In a series of cases, the ICC has indicated its disdain for regulating motor carrier rates. In Ex Parte No. 166,[24] the ICC stated that it would not exercise its powers to suspend and investigate motor carrier rates which are alleged to be unlawful. In Ex Parte No. 170,[25] the ICC permitted any motor common carrier to reduce is rates on one day's public notice or to increase its rates on seven working days' public notice. As a practical matter, this extremely short public notice authority makes it impossible for anyone, shipper or carrier, to seek ICC review of a rate before it goes into effect. That decision is pending judicial review.

IN Ex Parte No. 165,[26] the ICC exempted all contract carriers from the requirements tha they publish their rates in a tariff. The U.S. Supreme Court has been asked to review this decision.

The ICC recently allowed the Freight Forwarder Tariff Bureau to publish a tariff rule that allows freight forwarders to negotiate secret rates with shippers. Since freight forwarders are common carriers, this case has enormous repercussions for motor, rail, and water common carriers. It allows common carriers to evade their obligation to provide nondiscriminatory service at reasonable rates by negotiating secret rates with preferred shippers. This ICC decision wold destroy the tariff publication requirement which the U.S. Supreme Court has aptly described as the very cornerstone of the regulatory scheme.

The trend is unmistakable. The ICC is abandoning its rate regulatory responsibilities by eliminating the tariff filing requirements which make possible the detection of unlawful rates.

The transportation community is well aware that the ICC has relinquished its rate regulatory duties.

For example, Haddad Transportation, a motor common carrier, filed with the ICC in July, 1985 an application which requests special permission to establish secret, spot rates on a shipment-by-shipment basis.[27] The request, which is clearly unlawful, is noteworthy for several reasons. First, Haddad states that the application is necessary to compete with other carriers which are engaging in unlawful rebating. It accuses the ICC of being aware of, but ignoring, these unlawful rate practices. Second, Haddad boldly gives the ICC the ultimatum that either it grant this application or it will join the ranks of illegal ratemakers. Such conduct highlights the transportation community's acknowledgement of the ICC's unwillingness to enforce the law.

Consequently, large shippers are demanding preferential rates that are unrelated to costs and even below the cost of providing the service. Some shippers are demanding that they receive rate discount rebates even though its customers, the receivers, are paying the freight bill. To hide such unlawful transactions, some shippers are also requesting that the discount not be set forth in the tariff nor on the freight bill seen by its customer, the payor of the freight charges.

Motor carriers are being forced through shippers' economic leverage to offer substantial and secretive discounts of a discriminatory nature, some exceeding 50%, to shippers, warehousemen, brokers, etc. in order to retain their business. Such discounts are a major factor in the poor financial condition of the industry. The ICC has refused, in Ex Parte No. 166 and on other occasions, to provide the needed guidance on what constitutes an unlawful rate. Such guidance would be helpful in promoting fair competition in lieu of questionable shipper practices.

The ICC's unwillingness to regulate rates and provide clear standards has promoted the proliferation of intermediaries, such as freight brokers. These brokers charge carriers commissions for "controlling" freight routing which traditionally the shippers directly handled. Thus, as middlemen, they add unnecessary costs to the transportation service. Moreover, since brokers are not subject to the statutory rate requirements nor bound by the nondiscrimination laws, they contribute to the proliferation of secretive, discriminatory rates. There is no evidence that under the cur-

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[24] Ex Parte No. MC-166 *Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980*, served Nov. 26, 1982, appeal dismissed on procedural grounds in *American Trucking Assns., Inc.*, v. *United States*, 755 F.2d 1292 (7th Cir. 1985)

[25] Ex Parte No. 170, *"Short Notice Effectiveness For Independently Filed Motor Carrier and Freight Forwarder Rates"*, decision served May 23, 1984, appeal docketed No. 84-8499, *Southern Motor Carriers Rate Conference* v. *United States*, (8th Cir. July 2, 1984)

[26] Ex Parte No. MC-165, *"Exemption of Motor Contract Carriers From Tariff Filing Requirements"*, 133 M.C.C. 150 (1983); *Central and Southern Motor Freight Tariff Assn.* v. *United States*, 757 F.2d 301 (D.C. Cir. 1985)

[27] Special Tariff Authority No. 85-2375, *Haddad Transportation Inc.*, application filed July 11, 1985.

rent ICC encouragement of freight brokerage the Congressional goal of reducing costs to the ultimate consumer is being realized. Brokerage fees add another cost to the transportation bill. They do not reduce the overall transportation bill.

Congress must take official notice of these matters and admonish the ICC to enforce the statutory rate regulatory requirements. For stability and fairness, reasonable standards must be set.

6. Collective Ratemaking

In December, 1984 the ICC served its decision in Ex Parte No. MC-172.[28] There, the ICC found that the record did not support the restriction of collective ratemaking or withdrawal of antitrust immunity, either partially or totally. Those very current findings are noteworthy for at least two reasons. First, it reaffirms the 1980 findings of Congress favoring the collective ratemaking process and demonstrates the continuing failure of collective ratemaking opponents to prove their allegations that the process is anti-competitive or inconsistent with the National Transportation Policy. The investigation revealed a growing knowledge of the fact that the collective ratemaking process continues to be a significant and pro-competitive force within the general freight trucking industry. Secondly, the ICC's findings clearly demonstrate that Congressional input on such policy matters can and properly does have an impact on the regulatory process, particularly as regards matters of such important policy.

As the Congress knows, there are judicial remedies to actions of regulatory bodies such as the ICC. However, as the Congress also knows, such remedies are time consuming and impractical in that the two or three year period required to obtain a court decision reversing an ICC order is akin to the axiom, "the operation was a success, but the patient died."

It is for this reason that we believe it imperative that Congress take a more active role beforehand in important policy proceedings and help shape ICC findings so as to ensure the greatest of consistency with Congressional intent and goals.

Oversight hearings are important forums for Congressional review and we formally request their continuation, at least annually, although they are no longer statutorily required. But more importantly, it is critical for the Congress to establish an ongoing pre-decision policy review function over the ICC to effectively prevent policy decisions that are counter to Congressional goals.

CONCLUSIONS AND RECOMMENDATIONS

The motor common carriers of general freighter are in very poor financial condition. The industry is not yet recovering from the effects of the recession and 1980 legislative changes, two of which just became effective last year.

Mainly as a result of ICC administration of MCA 1980 we continue to witness a tremendous frustration of Congress' modernizing objectives.

Increased competition has been encouraged to get far out of hand and is producing gross economic waste and high costs under counterproductive ICC policies.

The financial devastation of the industry is making a mockery of the goals of stability, health and safer operation.

The negative results of ICC policies promoting wasteful and unhealthy competition have also had a crunching effect on industry productivity.

What was, only a few years ago, an efficient, economical and highly responsive trucking industry is being brought to its kness and threatened with almost complete destruction. The return of stability that was a "balancing of interests" promise of MCA 1980 has been totally thwarted by inconsistent and destructive policy pronuncements by the ICC.

It is encumbent upon Congress to express its dissatisfaction with the ICC for engaging in administratively destructive policy making. The RCCC respectfully recommends that Congress take the following action:

1. Continue ICC oversight and hold hearings at reasonable intervals, not less than annually, to ensure that the ICC complies with the law. Congressional scrutiny at these oversight hearings is the most effective means to hold the ICC accountable for its actions.

As a part of continued oversight we urge that the Congress play an active role in ICC actions—one that would be determinative of important policy matters. Through pre-decision participation, the Congress could better assure regulatory decisions in keeping with Congressional policy and objectives; and even forestall destructive re-

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[28] Ex Parte No. MC-172, *Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments*, decision served Nov. 27, 1984.

sults caused by serious consideration of frivolous or meritless proposals. Perhaps more importantly, we support the positioning of a "fair" body of Commissioners at the ICC.

2. Express its objection to the ICC proposal in Docket No. 38904 to eliminate the Uniform System of Accounts and to drastically curtail the motor carriers financial and operating data submitted in their reports which is necessary for the ICC to perform its delegated duties.

3. Admonish the ICC to reopen the credit rules proceeding, Ex Parte No. 1, to reconsider the suggestions of the transportation community.

4. Unequivocably state that the ICC is not empowered under Section 11343(e) to exempt intermodal mergers; that all railroad acquisitions of motor carriers must be processed under Section 11344(c); and that it is irresponsible for the ICC to grant these pro-forma exemption requests to railroads acquiring motor carriers.

5. Admonish the ICC that open-ended, industry-wide contract carrier permits are rarely, if ever, justified.

6. Admonish the ICC to: (a) enforce the statutory rate regulatory requirements; (b) establish and enforce reasonable rate standards; (c) require all carriers to file their rates in a tariff; and (d) declare as unlawful, shipper demands for rebates through rate discounting when the transportation charges are paid by another party.

7. Having taken the necessary actions to attain proper ICC responsiveness, Congress should also assure that they are adequately staffed and funded in a manner that will facilitate the carrying out of their regulatory responsibilities.

Thank you for your consideration of the RCCC position.

Senator PACKWOOD. Thank you, sir.

Ms. Bontz.

Ms. BONTZ. We thank you for the opportunity to present our testimony. My statement reflects the views of seven owner-driver organizations, Central Pennsylvania Trucking, Concerned Truckers of Ohio, Maryland Independent Truckers and Drivers, Fort Bedford CB Club, South Dakota Independent Truckers, Somerset County Truckers, and Owner-Operators of America. Collectively, we speak for at least 2,500 truckers.

But rather than count the number of truckers, we would like you to view us in the terms of service that we provide to the Nation's consumers. Our members haul steel, lumber, chemicals, food, building materials, household goods, fuel, manufactured goods, construction equipment, new automobiles, and so on. We haul just about everything you use or consume.

We truckers see ourselves as victims of the Motor Carrier Act. For 5 long years we have told the Congress that deregulation would harm not only the Nation's independent truckers but the general public as well. As you have heard today, the motoring public is a victim. Our Nation's highways have become a war zone. We do not believe the trucking industry is the single villain, but we can trace some of the problems to poorly trained, inexperienced drivers who, because of the financial pressures brought on by deregulation are pushing themselves beyond their physical limits. Unfortunately, many truckers will haul any load, whether or not it pays them to do so.

And then there are the unscrupulous agents and brokers who skim both from the truckers and the motor carriers. With the declining role of the Interstate Commerce Commission, it is a common practice for some agents of motor carriers to ship moonlight freight. Official reports say that truck tonnage is down. Perhaps it is because much of this freight is being shipped illegally, and the shipments are not reported, and I might point out that much of this freight is being hauled without proper liability insurance.

And then there are the companies, usually the newer ones, who refuse to pay the trucker after the load is hauled. There have always been crooks in the trucking industry, just as there are in any other occupation, but the anything goes attitude has created a breeding ground for them, and if no one is minding the store, the situations will get worse.

The industry no longer has the image of integrity. In spite of the past 5 years, trucking is still chaotic, primarily due to the three jolts mentioned by Senator Danforth. The food industry is probably the worst exploiter of truckers. They force a trucker who has driven many miles to get to the grocery warehouse to then unload the truck, other than getting much-needed rest while the warehouse unloads its own freight. Or else the trucker must hire lumpers who would do the unloading, most of whom pay no taxes, Federal or State, on the money that is paid them. The money is paid not by the grocery warehouse but out of the trucker's own pocket.

One further point. The broker makes a deal with the grocer that the trucker perform the labor or pay for it without consulting the trucker.

The implementation of the Motor Carrier Act has benefited only one group, the shippers. Now let's look at who has not benefited from deregulation in addition to truckers. The consuming public has not shared in the savings from competition and ratecutting because shippers do not pass those savings on to the consumers, and the public has suffered because of a dramatic increase in the number and severity of truck related accidents over the past several years. The cost of insurance for all classes of vehicles has risen astronomically because of increased accidents.

Deregulation has created a new class of outlaws who are few but highly visible. You can help put those outlaws out of business by halting further deregulation of the industry. Someone must be there to make sure that proper business practices are followed.

The other day I noticed a decal on the back of a trailer which said regulated carrier, and it struck me that an important consumer protection is disappearing, and when it is gone, it will be like doing away with the Food and Drug Administration and taking your chance when you buy medicine.

We need accountability and protection that comes from a trucking industry that is properly regulated. We recommend that the Congress take no further action to deregulate the industry at this time and allow time for the industry to recover and stabilize itself from the effects of the implementation of the Motor Carrier Act. We recommend that the Interstate Commerce Commission be required to enforce existing laws, and we ask that the Congress give it adequate funds to do so. We ask that the ICC be allowed to continue its Office of Small Business Assistance which has helped so many independent truckers. We urge the Congress to create a Motor Carrier Administration within the Department of Transportation which will give attention to the special needs of the trucking industry other than the economic regulation.

The Department of Transportation should take steps to improve safety, but we believe that economics and safety go hand-in-hand. Therefore, we feel that if there is economic regulation and appro-

priate enforcement action, the trucking industry will be able to ensure that equipment is safe and that drivers are well trained professional people.

We thank you again for the opportunity to present our views.

[The statement follows:]

STATEMENT OF RITA BONTZ, PRESIDENT OF THE MARYLAND INDEPENDENT TRUCKERS AND DRIVERS ASSOCIATION

Mr. Chairman and Members of the Committee.

My name is Rita Bontz and I am President of the Maryland Independent Truckers and Drivers Association which has its headquarters in Baltimore. My husband and I have owned and operated a truck in interstate commerce for nearly 25 years.

I want to thank the Subcommittee and its staffers for arranging this opportunity for me to present a statement regarding the implementation of the Motor Carrier Act of 1980. Our comments will also focus on proposals to further deregulate the trucking industry and we will make some recommendations for improving the stability of the industry.

This statement reflects the views of seven truck owner-driver organizations which work together to solve common problems and to accomplish our goals of improving safety on the highways, fostering professionalism in the trucking industry, and improving the economic situation of the trucking industry. The organizations are as follows: Central Pennsylvania Trucking Association, Bedford, Pa., Concerned Truckers of Ohio, Fremont, Ohio, Maryland Independent Truckers and Drivers Association, Baltimore, MD., Fort Bedford CB Club, Bedford, PA., South Dakota Independent Truckers Association, Rapid City, SD, Somerset County Truckers Association, Somerset, PA, and Owner-Operators of America, Boston, NY.

Collectively, we speak for at least 2,500 truckers. But rather than considering the number of truckers, we would like you to view us in the terms of the service that we provide to the Nation's consumers—the families, individuals, small businesses, large businesses, factories, and farms. If the members of these seven organizations were to drop out of service for just one day, the loss would be felt. Our members haul steel, lumber, chemicals, food, building materials, household goods, fuel, manufactured goods, construction equipment, and so on. We haul just about everything you use of consume in your daily life. But we are disappearing and it is because of the climate that has developed since the implementation of the Motor Carrier Act of 1980.

We see ourselves as victims of the Motor Carrier Act and its implementation. Many of us warned the Congress that deregulation would harm the Nation's independent truckers rather than to help them. For five long years, we have continued to repeat that warning. We believe that either no one is listening, no one believes us, or no one cares. Many good truckers have given up in despair, while others are clinging desparately to their chosen occupation. The irony of it is that our services are increasingly in demand by the trucking industry which sees us as having a more important role now than ever before. Traditionally, we have been lower-cost, more dependable freight haulers. In today's market, we are even more attractive to the trucking companies to whom we lease our skills and equipment. Those companies avoid high labor costs by using us, and many of the motor carriers are busy finding a myriad of ways to pass their operating costs on to us.

But we're not the only victims of the Motor Carrier Act of 1980 and other deregulation efforts. It is becoming more evident each day that the motoring public which shares the road with us is a victim.

We are sad to say that our Nation's highways have become a war zone. More people are being killed on the Nation's highways than were killed in Korea or Vietnam. We do not believe the trucking industry is the single villian but we can trace some of the problem to poorly trained, inexperienced drivers, drivers who, because of the financial pressures brought on by truck deregulation, are pushing themselves beyond their physical limits.

There are several reasons for these financial pressures. For one, the ease of entry provisions in the Motor Carrier Act make it possible for almost anyone to be a motor carrier. In theory, this sounds like the American dream—free enterprise at its finest. In reality, we are seeing people who form trucking companies to use them as a tax shelter with no concern about building a reliable business. They don't look for top quality drivers. They'll take any warm body to fill the driver's seat. Some of the new companies, and the old ones as well, have cut the rates to the point that they are below cost of operations. We truckers have no say in the rates, so we take it or leave it. Unfortunately, too many truckers will haul any load whether it makes

money or not. It may be they are trying to get home or just trying to get to a place where they think they'll find more profitable freight.

Or maybe they just don't know any better. Thousands of the new truckers have little or no knowledge of what it costs to operate a truck. They are slowly but surely putting themselves out of business. But even worse, they are depriving a better-informed, reliable trucker of a load which should be hauled at a compensatory rate.

And then there are the unscrupulous agents and brokers who skim from both the truckers and motor carriers. For example, they tell the unsuspecting trucker that a load pays $700 to the truck. They charge the shipper $1,000. The broker gets a 10 percent (or more) brokerage fee from the trucker's share and pockets the $300 the shipper pays over the amount the trucker gets. There is no one to stop this thievery.

It is becoming a common practice for some agents of motor carriers to ship "moonlight" freight. The agent prepares a set of papers under the name of a fictitious company. The trucker hauls the load and receives a share of the revenue. The carrier never knows that it lost the revenue and the agent pockets the money. In some cases, the agent demands that the trucker furnish proof of primary insurance (according to Federal regulations the motor carrier is to furnish the primary insurance). In other cases, there is simply no insurance coverage. There is an increasing amount of illegal freight being hauled and much of it by poorly qualified truckers. A trucker in upstate New York told us recently that in his town it is impossible to trip lease without having proof of $1 million in primary insurance. That is not only contrary to the regulations it is almost financially impossible for an independent trucker to buy that kind of insurance. Therefore, much freight is being hauled without proper liability insurance.

And there are the companies, usually the newer ones, who refuse to pay the trucker after the load is hauled. It's either, "You didn't file all of the paper work," "Can you furnish another delivery receipt", or "The check is in the mail." We can show you paperwork on two loads that a member of the Maryland Independent Truckers and Drivers Association hauled in November 1982 for which he was never paid. The company stalled long enough and finally went out of business. The ICC regional offices played around with the case until we got tired of pursuing it. The trucker chalked the several hundred dollar loss up to bad luck. This is just one case. We can tell you about many more.

There have always been crooks and cheats in the trucking industry, just as they are in other occupations. But the "anything goes attitude" has created a breeding ground for them.

If there is no regulation of trucking and no one is minding the store, these situations will get worse. And finally we'll lose the independent trucker. If that happens we will have lost an important link in our surface transportation. We realize that, just like everything else, the transportation system is changing. There's a trend to intermodal transportation and toward more regional operations rather than strictly long haul. But if we can only survive this chaotic state, we can adjust and keep up with the changes. For example, truck owner-drivers are vital to intermodal transportation. Observe the Port of Baltimore in operation for one day. Double stacking railroad cars may make the headlines and make a great argument for increasing the use of the railroads. But the railroads can't deliver those containers to more than a handful of points. Truckers pick up and deliver containers from both ends of the rail haul.

The implementation of the Motor Carrier Act has adversely affected safety on the highways and service to the consumers. It has benefited only one group—the shippers. Now, let's look at who has not benefited from deregulation in addition to truckers.

The consuming public has not shared in the savings from competition and rate-cutting because the shippers do not pass those savings on to the consumers. If the rates were compensatory, the money could go into buying and maintaining trucks and to hiring better drivers.

The motoring public has suffered because of a dramatic increase in the number and severity of truck-related accidents over the past several years.

The cost of insurance for all classes of vehicles has risen astronomically because of increased accidents.

Deregulation has created a new world of outlaws who are few but highly visible. You can help to put these outlaws out of business by halting any further deregulation of the industry. Someone must be there to make sure that proper business practices are followed. The other day I noticed a decal on the back of a trailer which said "Regulated Carrier" and it struck me that an important protection is disappearing. And when it is gone it will be like doing away with the Food and Drug Administration and taking your chances when you buy over the counter medicine,

or buying meat and foods that have not been inspected. We need accountability and protection that comes from a trucking industry that is properly regulated. No business, especially one as important as the trucking industry, should be without regulation that oversees its business practices.

We recommend that the Congress take no further action to deregulate the industry and allow time for the industry to recover and stabilize itself from the effects of the implementation of the Motor Carrier Act.

We recommend that the ICC be required to enforce existing laws and we ask that the Congress make sure that the ICC has adequate funds to do so.

We ask that the ICC be allowed to continue its Office of Small Business Assistance which has helped so many truckers.

We urge the Congress to create a Motor Carrier Administration within the Department of Transportation which will give attention to the special needs of the trucking industry other than economic regulation.

The Reagan Administration has stated that highway safety is a major goal and we would like to see the Department of Transportation take the necessary steps to improve safety. But we believe that economics and safety go hand in hand. Therefore, we feel that if there is economic regulation and appropriate enforcement action, the trucking industry will be able to ensure that equipment is safe and that drivers are well-trained, professional people.

We thank you again for the opportunity to present our views on the implementation of the Motor Carrier Act of 1980 and proposals for further deregulation and to recommend actions which we believe will help to save lives and to save the trucking industry.

I will be pleased to try to answer any questions you may have.

[The following information was subsequently received for the record:]

MARYLAND INDEPENDENT TRUCKERS & DRIVERS ASS'N INC.,
Baltimore, MD, October 18, 1985.

Chairman BOB PACKWOOD, *Subcommittee on Surface Transportation,*
Committee on Commerce, Science, and Transportation, U.S. Senate, Washington DC.

DEAR SENATOR PACKWOOD, We are pleased to furnish you with more information regarding our views on implementation of the Motor Carrier Act of 1980 and further deregulation of the trucking industry.

Before responding to your questions, we would like to say that we support the intent of the Congress to remove unnecessary regulations which stifle industry. We are concerned, however, that with the removal of burdensome and capricious regulations has come an "anything goes attitude" which is endangering our ability to survive in the industry and, more importantly, endangering public safety.

In response to your first question, we are unable to cite each regulation that we would like to see remain. But we can say that we owner-drivers need the protection that the Interstate Commerce Commission can give us. As we have stated on many occasions, most owner-drivers prefer to lease to a motor carrier because of the numerous advantages in doing so. But there are problems when the carrier is unscrupulous and cheats the trucker. In those cases, we have been able to go the ICC for assistance. If the ICC is disbanded and all economic regulation is removed, who will be left to make sure that carriers are honest? If there is no economic regulation, we fear that the industry will become chaotic and that there would be no one to make sure that ethical business practices are followed.

As far as the second part of your first question, we are not sure we understand the position of the Owner-Operators Independent Drivers Association. We have not read the Association's testimony, but we have heard their representative state that owner-operators have not taken advantage of the Motor Carrier Act of 1980. If the representative is referring to ease of entry, we would like to say that it is easy for an owner-driver to get operating authority but it is not easy to get freight to haul when you have your own operating authority and only one truck. For example, most shippers prefer to deal with someone who has sufficient equipment so that a breakdown won't keep the freight from being delivered. We have had the same experience in trying to obtain contracts with private carriers. In theory, the ease of entry and the sole source leasing regulations sound like a bonanza for independent truckers. In reality, they have been a bitter disappointment for us.

If owner-operators are to benefit from the Motor Carrier Act and further deregulation, we are going to need more time to adjust our operations. Five years has not been enough time.

As far as the second question—yes, we are being affected by the insurance crisis. Those of us who are leased to motor carriers must carry bobtail and deadhead liabil-

ity insurance in addition to the physical damage coverage for our vehicles. Our rates are increasing and we have asked the ICC to consider the impact of the crisis on the owner-drivers. We also told the Commission that we believe we should share in the surcharges which are granted to carriers to help them pay for increasing insurance rates. Although they are required by law to provide public liability and property damage insurance, some carriers charge this insurance back to the owner-driver by deducting it from the revenue split commission or the mileage compensation.

Truckers who haul exempt commodities and who are not under permanent lease to a carrier must also carry the public liability and property damage insurance, which has risen astronomically in recent months.

We hope that our responses have been useful to you in your oversight of the Motor Carrier Act and in your deliberations concerning the possibility of further deregulation of the industry.

If you want us to furnish additional information or to respond to more questions, please write to me at this address: 1109 Plover Drive, Baltimore, Md. 21227.

Yours truly,

RITA BONTZ, *President.*

Senator PACKWOOD. Ms. Bontz, you indicated that one of the groups that is suffering from deregulation is consumers.

Ms. BONTZ. Yes.

Senator PACKWOOD. Why aren't the normal consumer lobbying groups opposed to any further deregulation? I cannot find one that does anything other than support further deregulation.

Ms. BONTZ. Well, I am a consumer, and I am opposed to it. As a group, I do not know.

Senator PACKWOOD. I said the organizations that represent them.

Ms. BONTZ. Yes, I understand, but I do not know why they are not.

I cannot see why the public does not understand what deregulation is doing to safety on the highways, and I know the public is very concerned about safety, as we are.

Senator PACKWOOD. Mr. O'Connell, let me ask you about your organization. I am familiar with it. Clearly Ms. Bontz represents a different view, although she is not speaking for your organization.

Tell me the other competing owner-operator organizations that exist nationwide. As I recall, you are far and away the biggest.

Mr. O'CONNELL. Yes, we are.

Senator PACKWOOD. There is one headquartered in Massachusetts whose name escapes me.

Mr. O'CONNELL. That is the Independent Truck Owner-Operators. There is another group, the Independent Truckers Association, which is headed by Michael Parkhurst. That organization is not currently active in legislative matters at the Federal level. They have some State organizations that are working on state issues.

We believe that our membership of 6,000 makes OOIDA the largest owner-operator group. I might add that the 6,000 number was derived from a recent audit of our membership records. The association corresponds with 32,000 owner-operators, which is the size of our mailing list and circulation of our magazine. We feel it inappropriate to claim all of those persons as members. Therefore we count only the 6,000 dues-paying members.

Senator PACKWOOD. Thank you.

Mr. Granberry, Mr. Middleton, I want to get your two organizations straight.

I understand, Mr. Granberry, what the Conference is, and that you are part of the American Trucking Association. Mr. Middleton, you are not.

But I want to know in terms of the types of business or membership, are they similar? Are both of you speaking for roughly the same kind of businesses?

Mr. MIDDLETON. I would say that would be an accurate description. PTCA has approximately 1,800 members and represents a total cross section of the manufacturing, distribution and processing industries, and I think that pretty much parallels Mr. Granberry's organization.

Mr. GRANBERRY. Yes, we are a similar organization with something like 3,000 members.

Senator PACKWOOD. Mr. Harkins, you think if we continue on with deregulation and get rid of any further economic regulation, that it is the end of what? You said it right at the end of your statement, but I couldn't quite follow it.

Mr. HARKINS. I did not address what would happen if you continued to support continued deregulation. What I asked for at the end of the statement was that we find great fault with the administration of the Motor Carrier Act of 1980 by the Commission over the past 5 years, and we feel that unless something is done more actively by the Congress to play a role in the policy of the Interstate Commerce Commission, that there would be a continued frustration of the congressional objectives of that act.

Senator PACKWOOD. I guess it is a matter of interpretation. I was one of the authors of that act, and I do not think they have gone as far as I intended that they should go.

Mr. HARKINS. I guess it is a matter of interpretation, but essentially, as we read the act, and as we understand the way that the law operates, we feel that their administration of that act has been definitely outside of the intent of Congress as the act was finally framed on the basis of being a compromise of interests.

Senator PACKWOOD. Are most carriers now offering discounts below the published tariffs?

Mr. HARKINS. Most of the general freight carriers I would say are offering discounts, which mark off the published basis of rates, yes, sir.

Senator PACKWOOD. Is that not kind of a ridiculous situation? I do not mean that they should be charging the rates, but in essence, the published rates are not the rates.

Mr. HARKINS. I do not think it is ridiculous at all. I think there is room in every industry for the opportunity for carriers to offer prices that are below a certain level, a retail level, if you will and which are above their costs, and for which they would be able to better compete for freight.

Senator PACKWOOD. I understand your answer on that, but it is ridiculous to say the cost of shipping is $100 a ton if the average carrier is discounting it at $80 a ton. The cost is not $100 a ton.

Mr. HARKINS. Well, the average cost is always something different than one might expect for the rate. The production of a rate structure through a collective process is based upon the weighted average of carrier costs, and for individual carriers to either adopt that rate as the one they wish to charge or to take independent

action and assess a different rate based upon their own costs has always been a feature of the collective process and we feel still should be.

Senator PACKWOOD. I do not have any other questions.

Oh, yes, Mr. Granberry?

Mr. GRANBERRY. Yes; I have in pursuance of that point, I have here in front of me a letter by the ninth largest carrier in the country dated August 1, saying effective immediately, we are cancelling our participation in all Bureau textile products tariffs in Southern Motor Carriers Rate Conference effective August 13, and Central and Southern Motor Freight Tariff Association effective August 20. We are implementing the following discounts off the present class rates effective August 2, 1985: minimum charges, 30 percent; less 500 pounds, 35 percent; 500 pounds and over, 38 percent. All volume shipments will be discounted at 44 percent of the class 100 rates subject to a minimum weight of 30,000 pounds, effective August 15. Where bureaus publish 40,000 pound rate scales and they produce lower charges, such charges will apply.

This is just a sample of all of the many discounts that are making traffic cheaper today than it was.

Senator PACKWOOD. I think we are going to reach a situation where if you continue to have the rate bureaus, you are going to have discounts of 100 percent after a while. I suppose there is no harm other than it is kind of a paper shuffling operation, and the rate bureaus continue to publish their rates so long as nobody pays any attention to them, nor has to pay any attention.

Mr. GRANBERRY. Why should we have a rate bureau then? Why not just do like the textile people do and have spot pricing?

Senator PACKWOOD. Well, I agree.

Mr. HARKINS. Mr. Chairman, if I may, I think there is a definite purpose in the existence of rate bureaus and that there is a definite benefit in the collective process that would inure to shippers in general. One of the difficulties is that the administration by the Interstate Commerce Commission of the Motor Carrier Act provisions has thwarted substantially the ability of the collective process to do the job that it can do for shippers in general. Recently there has been an indication from certain segments of the Commission that they recognize the fact that the collective process is a pro-competitive feature if it is used properly, and therein lies the problem.

What we are asking from the Congress is assistance in assuring that the commission does administer the existing regulation and essentially the collective ratemaking process in a way that it can become procompetitive for shippers in general.

Senator PACKWOOD. Thank you.

I have no more questions. I appreciate it very much.

We will conclude today with Mr. Donald Schneider, Mr. Herald Smith, and Mr. Michael Applegate.

Mr. Schneider, go right ahead.

STATEMENTS OF DONALD SCHNEIDER, PRESIDENT, SCHNEIDER NATIONAL; HERALD A. SMITH, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER, CRST INTERNATIONAL; AND MICHAEL T. APPLEGATE, VICE PRESIDENT, APPLEGATE DRAYAGE

Mr. SCHNEIDER. Thank you, Senator.

You have a prepared statement that I got in to you late Friday.

Senator PACKWOOD. This is one of the few I did not get a chance to read, but I will.

Mr. SCHNEIDER. Thank you.

What I will do then is just summarize some of the things that I said in the statement and just talk about the issues.

Senator PACKWOOD. All of the statements will be in the record, and we will ask you to hold yourselves to 5 minutes.

Mr. SCHNEIDER. All right.

I am Donald Schneider, president of Schneider National. We are truckload carrier domiciled in Green Bay, WI. We are national in scope with a number of various regional companies and operations. We run 4,300 power units, 9,000 trailers, handle about 10,000 truckloads a week. This year, 1985, we will run about 425 million miles.

The regulation of the motor carrier industry is one that I grew up with, and its change was a welcome one, and I would say that it was a big success and it was badly needed. Some of the things we are seeing in the industry today are not totally a result of deregulation. We in the industry, as in all industries, serve our customers, and what we are seeing today is what our customers are demanding from us, which is a result of the tremendous competition that they are facing in all the markets that they are serving, and that is better prices and a better service in order to move their goods throughout this country.

What deregulation did was allow the motor carrier industry to respond in a very appropriate manner as contrasted to some of the other manners in which we would have responded in the past, and as a result, I think we are much better off today.

Obviously this has not been without a lot of pain. Any time that you make the kind of changes you have to make in order to compete more efficiently, there is going to be some pain. The change required that kind of thing, but obviously we would not have the gains that we have had if we did not want to go through those pains. And we as a company, and I think many of the companies in this industry have gone through that.

We still have not dealt with all of the issues though, and I think there is more that we have to do. I kind of liken it to the way a stream is in the springtime when the water is pretty high and you are floating down that stream, you do not see what is on the bottom and all the issues that are lying there, you are just kind of floating over all of these, and when you get into the summer and fall and the water drops, you begin to see all these rocks that are there that really create problems for you. And these are now creating major problems that are standing in I think the industry's way of being more productive and more efficient and putting up a lot more risk than we really need to have to deal with.

I start off by saying that first of all we need to do away with a lot of the administrative processes that go on within the ICC. I do not see any need to continue any of those particular issues, to continue any type of regulation that the ICC does for us.

Second, a very serious issue is MEPPAA. Unfortunately this came along at exactly the same time that deregulation came along and as a result, has created a lot of harm for the industry and also for the employees within the industry, and in fact, one of the problems here is that MEPPAA was trying to actually help a lot of our employees and in many instances they have really harmed—the law has actually harmed them.

Very specifically, for a truckload carrier, we are in that segment of the industry where the many thousands of new entries have come in, and as a result, those drivers within our company that are unionized are having to face competing with those people and in many instances restricted from the standpoint of costs of what we can do with their benefit packages by the laws that MEPPAA has created.

And very specifically, what I think needs to be done is that MEPPAA ought to require that each one of those companies be costed out individually based on the demographics of that particular company's drivers, and they are vastly different. That way our drivers would not be saddled with many of the costs of a group of industry people and sometimes not even industry people that are not totally competitive with them but for which they have to compete for work.

I also think probably that a truckload exemption is right based on the number of union carriers and nonunion competition.

I also think that State economic regulation is another major issue. Texas is a good example. It is kind of ridiculous when you can take a load from Dallas and deliver it to Texarkana, and if you go across the State line and deliver the Arkansas part of the load first and then come back, then you can handle it. Otherwise you have to ship the truck empty.

Two other major issues are STAA and the mess that has created for truckload carriers in access to various shippers' plants, and the last is the myriad of tax laws and permits that we are facing as an industry.

Thank you very much for your time.

[The statement follows:]

STATEMENT OF DONALD J. SCHNEIDER

My name is Donald J. Schneider, and I am the Chief Executive Officer and President of Schneider National, Inc.

Schneider National is a distribution services company. Our business is one of creating and developing "distribution solutions."

Schneider National operates is excess of 4,300 tractors and 9,600 road trailers. We move about 10,000 truckloads per week and have approximately 5,300 employees and owner operators. In 1985, we will run 425,000,000 miles.

Schneider National consists of a number of companies that serve as operating hubs strategically positioned for national coverage in locations throughout the country. Our corporate headquarters is located in Green Bay, Wisconsin.

During 1985, Schneider will serve more than two-thirds of the nation's "Fourtune 500" and thousands of additional shippers and consignees located at points throughout the United States and Canada.

Schneider National publishes its own rates and tariffs and negotiates its own contract rates. Schneider National does not participate in rates set collectively through rate bureaus or other similar agencies.

While Schneider National does transport exempt commodities from time to time, virtually all of the operations described above involve regulated commodities and are therefore subject to the Motor Carrier Act of 1980.

The trucking industry is in a unique period in its history. Since 1980 the industry has gone through a period of dramatic period.

The primary cause of this dramatic change was not deregulation. The primary cause was the structural change in our world economy that has created a very intense competitive atmosphere in the markets our customers serve. This is not to say deregulation was not a significant catalyst for the changes in our industry or that it has not shaped the last five years. Deregulation allowed the response by the truckload industry to this new environment to be one of improved service at lower rates. The industry is responding appropriately to our customers' needs. This response would not have been possible prior to 1980.

The changes required to the industry and Schneider National have been difficult. Despite the extremely trying times of these last five years, we rate the Act a success. We believe that deregulation has been in the best interests of the nation and the shipping public. Having said this, I want to emphasize that the industry's first five years under the Motor Carrier Act of 1980 (the "Act") have not been without significant problems.

The primary objective of the Act—to improve the efficiency of transportation in this country—has been only partially achieved. Because all laws are interrelated, other legal changes still need to be made. The Act will not achieve its stated objective unless these changes are made. The necessary changes are:

—elimination of substantially all remaining ICC regulations
—elimination of the huge unfunded pension liabilities created by the Multi-Employer Pension Plan Amendments Act of 1980 ("MEPPAA")
—elimination of state economic regulations governing motor carrier entry
—a truly uniform system of regulating the configuration, size, and maximum allowable weight of tractor-trailer combinations
—adoption of uniform regulations concerning licensing, permits, taxes, and similar matters.

Each of these necessary changes (problems) is addressed below.

ICC REGULATIONS

While a number of ICC regulations have been eliminated by the Act, there are a number remaining that should be eliminated. These are primarily in the areas of:

—collective ratemaking
—accounting
—tariff and rate filings
—finance
—claims
—recordkeeping
—acquisitions
—entry
—credit and collections
—lease and interchange

We believe these ICC regulations and others no longer serve any useful purpose.

MULTI-EMPLOYER PENSION PLAN ACT AMENDMENTS

One of the most urgent and critical problems facing our industry is the matter of the huge unfunded liabilities that have been imposed by MEPPAA on union carriers that participate in multi-employer pension plans. The passage of MEPPAA only a few months after the Act has severely hampered these carriers in their efforts to respond to market and competitive pressure by bringing their wage and fringe benefit costs in line with those of the literally thousands of new non-union truckload carriers.

The combined effect of the Act and MEPPAA has been the demise of literally hundreds of union carriers and the loss of thousands of union jobs. Prior to passage of the Act and MEPPAA, we estimate that there in excess of 200 union truckload carriers. Those ranks have been decimated and one of our companies, Schneider Transport, and a handful of much smaller truckload carriers, can now unfortunately lay claim to being virtually the last of the union truckload carriers.

MEPPAA prevents union truckload carriers from being cost competitive. Plan trustees adopt rules that prevent employers from collectively bargaining the contributions necessary to bring their fringe benefit costs in line with those of the non-union competition. Another adverse effect of MEPPAA, in combination with deregulation, has been the practical inability of inefficient carriers to go out of business because of the threat of huge unfunded liabilities that jeopardize a company's net worth. Many of these inefficient companies have been hanging on for years by reducing their rates in order to maintain market share, and slowly consuming what is left of their net worth in the hope that something will be done about MEPPAA. These carriers have depressed existing rates to the detriment of healthy and efficient carriers that would otherwise have a better chance of survival.

As a result of MEPPAA, union truckload carriers like Schneider Transport, one of the Schneider National companies find themselves subject to a regulated fringe benefit package in a deregulated, essentially non-union marketplace. Schneider Transport's fringe benefit costs are more than three times those of its non-union competition. On the other hand, to collectively bargain a competitive fringe benefit package could result in Schneider Transport's triggering its share of the unfunded liability. Something must be done about the MEPPAA problem if union carriers like Schneider Transport are to be given a fair chance to compete and survive, and the thousands of jobs that they represent are to be saved.

STATE ECONOMIC REGULATIONS

We are familiar with the theoretical rational most frequently offered for economic regulation at the intrastate level. All too often the practical rational for economic regulation at the state level seems to be the exclusion of interstate carriers (usually "out of state" companies) for the purpose of protecting the carriers based within a particular state. This means that interstate carriers conducting 48-state operations like ours incur substantial and costly inefficiencies over which we have little, if any, control.

While any one of a significant number of states could be used to illustrate this point, Texas is the example used most frequently and one with which we are thoroughly familiar. Even though Schneider National picks up and delivers literally thousands of interstate loads at points in Texas, employs both office and driver personnel in Texas, has a major facility located in Dallas, and enjoys substantial customer support in that State, we have been able to obtain only extremely limited Texas intrastate authority.

We incur literally thousands of empty miles within the State of Texas that could be filled if it were not for that State's restrictive economic regulations. We are prosecuting, at great expense, a Texas intrastate application which, if granted, would eliminate many of these empty miles. However, the outcome of that application proceeding, given the State's regulatory environment, is uncertain and it will probably be years before we know whether or not we will ultimately be permitted to operate.

While the Act allows us to serve interstate shippers more efficiently, we cannot serve the same shippers intrastate. This prevents the establishment of common trailer pools, transportation of mixed interstate and intrastate shipments, and other similar and obviously more efficient operations. Instead, the customers involved must use more expensive and less efficient intrastate carriers who are protected from competition by these outdated regulations. We wish the situation in Texas was unusual—unfortunately, it is not. If the primary objectives of the Act to be achieved, restrictive state economic regulations must be eliminated.

STATE SIZE AND WEIGHT REGULATIONS

The goals and objectives of the Act cannot be achieved without some reasonable degree of uniformity from one state to another. The Surface Transportation Assistance Act of 1982 ("STAA") should have complemented the Motor Carrier Act of 1980. Unfortunately, it has not.

The STAA is a mixed bag as far as the motor carrier industry is concerned. It included huge increases in Federal Highway Use and Fuel Taxes. In return, the industry was to be given an opportunity to increase its productivity through the use of longer and wider trucks ("STAA vehicles"). Implementation of the STAA was left to the Department of Transportation's Federal Highway Administration ("FHWA").

Unfortunately, there is less uniformity now than there was before the STAA was adopted. The problem seems to be FHWA's susceptibility to pressure applied by individual states that have resisted implementation of the STAA's uniform standards and the STAA's ambiguities and inconsistencies in the treatment of various motor carriers.

There is great pressure on the market side to provide STAA vehicles, but the industry is experiencing troublesome restrictions on highway access for STAA vehicles. It is clear that the STAA has not worked in the way Congress intended, and that the resulting lack of uniformity has impeded achievement of the goals and objectives of the Motor Carrier Act of 1980. Congress should address this problem and require the various states to allow unrestricted use of STAA vehicles nationwide.

STATE LAWS AND REGULATIONS IN GENERAL

Many of our comments concerning intrastate economic regulation and implementation of the STAA by the various states are equally true with respect to other forms of state regulation that affect our industry. The areas of taxes, permitting, and licensing are particularly troublesome.

While we acknowledge right of individual states to regulate our industry in order to preserve the safety and welfare of their citizens, we believe that existing state regulations are needlessly complicated, frequently inconsistent with one another, and impose wholly unreasonable and unjustified costs on our industry. It is difficult to imagine how the primary objectives of the Act can ever be achieved as long as this needlessly complicated patchwork quilt of state regulation is allowed to continue. Congress should require the individual states to adopt fair, uniform, and consistent regulations governing motor carriers.

CONCLUSION

We believe these are the five most significant problems facing our industry—problems that were not addressed as part of the Motor Carrier Act of 1980 but must now be faced as part of any similar legislation Congress may see fit to adopt. Some in our industry would add an additional issue to our list: the establishment of a Motor Carrier Administration within the Department of Transportation. While we do not oppose the creation of such an administration, before we could support the proposition we would have to be satisfied that such an administration would not be used as a vehicle for reregulating our industry.

In summary, this Act was timely and effective but has not accomplished its stated goal because a number of other extremely troublesome laws or situations described above need to be addressed.

[The following information was subsequently received for the record:]

SCHNEIDER NATIONAL,
Green Bay, WI, October 23, 1985.

Ms. KAREN BORLAUG PHILLIPS,
Surface Transportation Committee, U.S. Senate, Committee on Commerce, Science, and Transportation, Washington, DC.

DEAR MS. PHILLIPS: In response to Senator Packwood's letter of October 8 and the questions of the Commerce Committee Majority, I have the following additional comments regarding the Motor Carrier of 1980.

My testimony indicated that the following areas need to be eliminated from the Act:

—collective ratemaking
—accounting
—tariff and rate filings
—finance
—claims
—recordkeeping
—acquisitions
—entry
—credit and collections
—lease and interchange

Although the above list sets forth the areas of our most immediate concerns there is not one area within the present ICC jurisdiction that shouldn't be eliminated.

I recognize that various special interest groups are seeking to retain regulation in certain areas (e.g. claims, collective ratemaking). These areas should not be treated any differently.

It is in the best interest of both shippers and carriers to come to a satisfactory arrangement regarding claims, as well as all other aspects of their relationship. By putting the full responsibility on both the customer and shipper they will reach a satisfactory solution between them or their relationship will cease.

With regard to collective ratemaking, I do not believe a carrier can continue to rely upon rate bureaus and still survive in a deregulated atmosphere. A carrier must know its own costs in order to control them. If a carrier doesn't know its costs, how can it manage them. In addition to managing costs, carriers must know what freight is profitable and by what margin so it is in a position to negotiate prices with customers. A rate bureau simply is not in a position to know individual carrier costs. The sooner that carriers are forced to know their costs, the sooner they will be efficient.

I want to be very clear that, if Congress eliminates ICC regulation without addressing the other four major areas referred to in my written testimony, the industry will be greatly harmed, and the primary objective of the Motor Carrier Act of 1980, an efficient transportation system, will not be attained. These are:

—elimination of the Multi-Employer Pension obligations for truckload carriers,
—elimination of economic regulations at intrastate level,
—unrestricted use of STAA vehicles nationwide, and
—uniform state regulations regarding taxes, permitting and licensing.

Sincerely,

DONALD J. SCHNEIDER.

Senator PACKWOOD. Thank you.

Mr. Smith.

Mr. SMITH. Mr. Chairman, my name is Herald A. Smith. I am chairman of the board of CRST International. This is a company based in Cedar Rapids, IA. CRST is one of the Nation's largest truckload carriers serving all 48 States.

I would like to thank the chairman for allowing me to be here today, and I have a short statement and a full statement I would like to have printed into the record, if I may.

Senator PACKWOOD. All of the full statements will be in the record.

Mr. SMITH. Thank you.

I am a past chairman and president of the interstate carriers conference of the American Trucking Association, and I have served as chairman and president of the Iowa Motor Truck Association. I have also served on the Governor's Blue Ribbon Task Force on Transportation in the State of Iowa.

I founded CRST in 1955, and from the beginning I sought ways to expand my company's service, but under the stringent Federal regulation, I found this to be a very slow and frustrating task. In the first 24 year's of CRST's existence, the company's revenues grew to $44 million. In the 5 short years since the passage of the Motor Carrier Act in 1980, those revenues have tripled to nearly $130 million, and we certainly are eagerly looking to the future.

Prior to the 1980 Motor Carrier Act, expansion was a difficult and very costly process. It seemed that for every step forward we took, we took two steps back as a result of nitpicking by the Interstate Commerce Commission. At one point I was called on the carpet for what I considered to be a classic case of needless Government interference. I had at that time the ICC authority to haul farm implement blades. These blades were painted red. The manufacturer of this product also painted some of these blades yellow for industrial use. It was exactly the same product except for the color of the paint, and yet I found myself in trouble with the ICC for hauling the yellow ones.

I was also accused of destructive rate practices for applying the same rate on the different colored blades. The only difference was the color, but I had to apply different rates.

It was the same type of senseless red tape that forced me to spend nearly as much time battling the bureaucracy as I spent running my business, and the efficiency of my business certainly suffered. It has become obvious since 1980 that there are a host of better mousetraps waiting to be built in the motor carrier industry.

For example, last October my company began offering expedited service between the Midwest and the west coast. In the 11 months since its inception, that operation has grown a phenomenal 800 percent. As a businesman, this indicates to me that we are providing a transportation service which was previously unavailable.

In a regulated environment it would have taken us years to put together the operating authority to begin such an operation, if at all possible, and quite frankly, I doubt if we ever would have considered doing so. It is apparent that regulation was a great disservice to those customers who are now using this service.

The easing of regulation has been a boon to shippers, as is indicated by the reduction of freight rates and improvement of service which has occurred nationwide. In order to remain profitable, most carriers such as CRST have had to concentrate their efforts on increased efficiency. Only recently CRST's marketing manager told me, "It is amazing how efficient we have become." If we had done this prior to deregulation, we would have made a fortune.

There are, however, some areas outside of economics which have got to be addressed. Safety certainly has got to be given top priority. We must take action to remove unsafe drivers and trucks from our Nation's highways, and we need your help. At present, there are far too many drivers who hold multiple licenses from various States, and they spread their citations out over these licenses in order to keep driving. We need to institute a national interstate truckdriver's license to stop this very dangerous practice.

We also need an act to remedy the situation which comes from nonuniform registering and taxing by the various States. We do not seek to restrain the States from their right to tax or license vehicles, but the current system of dealing with 48 separate jurisdictions is an insane jungle for the interstate motor carrier.

The States know this as well as the trucking industry, and it is obvious that they will never be able to provide a solution.

Regulatory reform has been a good thing for the consumer, for the trucking industry, and for the country as a whole, and we must complete the task if our transportation system is to be able to provide the efficient, dependable service our economy needs.

I have seen the bill recently introduced into the House of Representatives known as the H.R. 3222. It contains much that is of merit. I urge you to examine this bill and use it as an example of what might be done here in the Senate. If you and your colleagues show the same foresight you demonstrated in 1980, our Nation's transportation system will be well prepared for the future.

Thank you.

[The statement follows:]

STATEMENT OF HERALD A. SMITH, JR.

Mr. Chairman and Members of the Subcommittee:

My name is Herald A. Smith, Jr. I am chairman of the board of CRST International, which is based in Cedar Rapids, Iowa. CRST is the parent company of five

transportation-related companies—CRST, Inc., Malone Freight Lines, Inc., and Three I Truck Line, Inc., all of which are irregular route motor carriers, and Rapid Leasing, Inc., and Lincoln Sales and Service, Inc., which are equipment and driver leasing operations.

The largest of the companies, CRST, Inc., is one of the nations's ten largest truckload carriers. CRST International serves customers in all 48 contiguous states.

I am a past chairman of the Interstate Carriers Conference of the American Trucking Associations, and I have served as chairman and president of the Iowa Motor Truck Association. I have also served on the Governor's Blue Ribbon Task Force on Transportation in Iowa.

I began CRST in 1955 with borrowed funds. At that time I held only Interstate Commerce Commission authority to haul iron and steel products from Chicago to Cedar Rapids. As an entrepreneur, it was necessary to seek ways to expand my company's service, both in terms of commodities and geographical area, but I found this to be a frustrating and time-consuming task, due to the restrictions imposed by ICC regulation. Over the years I added bits and pieces of operating authority, primarily through purchases of other carriers, which gradually allowed my business to grow.

At this time, dealing with the almost incomprehensible maze of ICC regulations was considered a normal business condition in the trucking industry—something we had to live with. There were, however, certain advantages to the system, especially for those carriers who were fortunate enough to hold many authorities covering many commodities in many geographical regions. Freight rates were closely controlled, and there was very little price competition among carriers. It was easy to raise rates, but impossible to lower them, because of the rate bureaus. It was difficult, if not impossible, for new carriers to enter the field.

In retrospect, it was not as difficult as now to make money, providing you held the authorities. In my opinion, many motor carriers who are now finding themselves in financial trouble can trace the roots of their problems to this closely controlled environment. Their competitive instincts were dulled by ICC regulation.

The Motor Carrier Act of 1980 changed all that. With regulatory reform came a whole new set of criteria for success in the motor carrier industry. Among these criteria are increased emphasis on excellent management skills, marketing and efficiency of operation. The wheelers and dealers who had become successful because of their ability to acquire new authorities have been replaced by professionals who recognized the shift toward a customer-oriented method of doing business.

I freely admit that I felt restricted under ICC regulation. During the early years of CRST's existence I functioned as a salesman, as well as the head of the company. During my sales calls I could not help but see how wasteful and inefficient regulation could be. There were many times when I felt that whatever entrepreneurial skills I had might be better utilized in some other endeavor. I suppose it was my natural inclination to seek to build that "better mousetrap". I chafed under the close scrutiny of the ICC and it often seemed that I spent more time paddling about in oceans of red tape than I spent running my business. As I look back on those days, some of the conditions we accepted as routine seem like a chapter out of "Alice in Wonderland."

There was one instance in which I became embroiled in a dispute with the ICC over a coating of paint. At the time I was doing business with an implement manufacturer who produced earthmover blades. Some of these blades were intended for farm use, and were painted yellow. Others were produced for use on the farm, and were painted red. Understand, they were the exact same product, except for the color. I had the authority to haul the red blades, but it took an entirely different ICC authority to haul the yellow ones. I made the mistake of hauling some yellow blades for this customer, and ICC found out. Charges were filed, and I was fined. Same product, but a different color, requiring a different authority at a different freight rate. This was the world of trucking prior to the Motor Carrier Act of 1980. Because of the decision against me, and the subsequent fine, my competition was successful in stopping any new growth by CRST for a long time.

Despite strict control by the ICC, and despite the adversary relationship which was often the focus of my attention, CRST somehow grew until we reached $44 million in revenues in 1979, the year before Congress passed the 1980 Act.

In the five short years since regulatory reform, those revenues have tripled, and we eagerly look forward to the future. CRST has not only survived the Motor Carrier Act of 1980, we have prospered under it, and we are not alone.

We have done so by putting together a management team which understands the relationship between service and success. We have learned how to market our services, to the benefit of our customers and our company. We have learned to listen to our customers, and then to tailor our operations to fill their needs. Many carriers

who are faced with financial difficulties have not learned, as yet, that we no longer operate in a world of "you call, we'll haul."

In a word, we have learned to live in a competitive world. It takes effort, it takes brainpower, it takes attention to detail, but there are rewards awaiting the efficient.

Our success in a free market is not entirely the result of our own actions. Much of this success has come about because our customers have transportation needs which were simply not being filled.

One example of this can be pointed out by the spectacular success CRST has had in an operation we developed specifically to fill our customer's needs. Our marketing department determined that shippers in the Midwest and on the West Coast often found a void in some of their transportation requirements. Much of the freight between these two regions moves via "piggyback"—truck trailers loaded on the back of railroad flatcars. This mode of transportation is relatively inexpensive, but slow.

Trucks, on the other hand, provide much better service, both in terms of transit time and the door-to-door service railroads cannot offer. But, because trucks cannot move the sheer volumes that trains can, the cost of motor carrier service can be relatively high.

We determined that we could provide the service level of truck transportation at a price level competitive with the railroads by focusing on fleet efficiency. We began our expedited service to and from California last October, and the response from our customers has been little short of phenomenal! In the 11 months since this operation came on-line, it has grown an incredible 800%.

In a regulated environment it would have taken us years to put together the necessary prices of authority to start such an operation, and quite frankly, I doubt that we would have risked the time and expense to do so. And yet, our success tells me, as a businessman, that we are providing a service for which there has been a need.

Efficiency has been the key to our success since 1980. Just the other day, CRST's marketing manager said, "It's amazing how efficient we've become. If we had done this before deregulation, we'd have made a fortune."

This drive for efficiency has been an unexpected by-product of the 1980 Act. In fact, during the debate prior to the passage of the Act, much concern was focused on the argument that passage of the Act would make our industry less efficient. I can say, in no uncertain terms, that those carriers who have not made themselves more efficient will soon be limping off to the boneyard of bankruptcy. The ultimate winner is the American economy.

This drive for efficiency and increased productivity is permeating our industry. At CRST it has resulted in an increased emphasis on safety, and a greater role for our maintenance department in the company's profitability.

Our experience in the area of safety has been that we have found that a reduction in accidents drops immediately to our bottom line. Many carriers have long looked upon their safety departments as costs, rather than as contributiors to the company's profitability. This is not true at CRST. We have hired the best safety experts we could find to actively seek ways to improve our profit picture. We have done so by improving our driver training, by emphasizing safety at every turn, and by offering our drivers bonuses based upon their accident-free records. We view these bonuses as money well spent.

Our maintenance managers are playing an increasingly important role in our drive for efficiency. One of the major changes in our operations since 1980 has been the attention we now pay to maintenance records. By doing so, we are able to keep close tabs on our costs, and to adjust our preventative maintenance programs to ensure that our equipment is on the road, making money, rather than in the shop, costing money. The end result is a safer and more productive fleet.

One offshoot of this heightened awareness of the role played by our maintenance staff will prove to be a boon to the trucking industry as a whole, and will help strengthen our nation's transportation system. This is the increased cooperation which we are seeing between our maintenance executives and the truck manufacturers. As we track our maintenance records, we are able to determine what adjustment need to be made to improve such items as fuel economy and maintenance costs. We are, if effect, providing our vendors with a large scale means of road testing their products. There have been serveral instances in which our maintenance staff has called in representatives of truck and component manufacturers for demonstrations and "real world" tests, which have led to design changes in the equipment. Eventually, these changes are made available to the trucking industry as a whole, and the result is a more efficient transportation system for all of us.

The free market in which the motor carrier industry now operates is a leaner, more efficient, more customer-oriented industry than could have been hoped for prior to 1980, but the task is yet to be completed. The time has come to totally de-

regulate the economics of motor carrier transportation. The marketplace has proven itself to be a far better determiner of costs and services than federal regulations ever were. And yet, vestiges of the old order still remain to hamper our drive to build the best transportation system possible.

Rate bureaus still engage in what amounts to legal price-fixing in many segments of the trucking industry. The segments which still use rate bureaus are receiving what I consider to be artificially high freight rates, and this is detrimental to the consumer, the drive for efficiency, and the economy as a whole.

We must also realize that the "free market" of which I speak has been, in part, a result of the manner in which the 1980 Act has been administered. Unless Congress acts to ensure that this free market will continue, our transportation system may be faced with yet another upheaval. We have had five years to adjust our operations to de facto deregulation under the present administration. Our industry and our nation's economy cannot afford the turmoil which would be the result of a return to past practices under a pro-regulatory administration in the executive branch. The Interstate Commerce Commission's role as an economic regulator should be ended, so that our nation's motor carriers will be able to plan for a future unclouded by whatever political changes may lie ahead.

While I am convinced that the free market will best determine the economics of our industry, there are still some areas where federal oversight will play a critical role in our nation's motor carrier system.

The Department of Transportation must continue to monitor safety compliance, not merely at present levels, but the DOT's efforts in this field must be redoubled. As motor carriers we share the nation's highways with millions of other vehicles, and because of this we must take steps to ensure the safety of each and every highway user.

The vast majority of truck drivers are safe and courteous. They have to be—their livelihood depends on it. Unfortunately, there is a tiny minority whose actions leave much to be desired. Our industry recognizes this, and we have spent many hours and a lot of money addressing this issue. Our research tells us that most of those drivers who are causing the problems are beyond the reach of our industry associations. These are the wildcatters and the outlaws—gypsies who answer to no one but themselves. One distressing trend we have seen is the practice of holding multiple drivers' licenses. These renegades set up fictitious addresses in several states and obtain numerous drivers' licenses. They are then able to spread their violations over these licenses, so that they are never in danger of losing their driving privileges. At the present time, there is almost no communication between the state drivers' licensing administrations, because of the sheer volume of paperwork such an effort would entail.

This is a problem which can only be resolved at the federal level. We must act, and act quickly, to institute a National Driver Registry. Such a registry would make a national tractor/trailer license mandatory for anyone operating a semi-truck interstate. By taking this much-needed step, the Department of Transportation would make giant strides toward everyone's goal of safer highways for our motorists. It would also make certain that the men and women who operate the large rigs are qualified to do so. As unbelievable as it may seem, there are now states which do not require any proof of a person's ability to operate tractor/trailer combinations before issuing licenses allowing these persons to do so. It is my conviction that if federal licensing requirements were adopted, the states would follow along of their own accord.

Another issue that must be addressed at the federal level is the development of some means of providing for uniform licensing and tax reporting procedures to the states. Obviously, Congress may not interfere with the states in areas pertaining to the levels of licensing and taxation, but clearly our industry and our nation's economy will be well served when the federal government acts to streamline the reporting process.

At the present time, each motor carrier must deal with every state in which that carrier operates on a one-to-one basis. In the case of a national carrier such as CRST this means 48 separate jurisdictions. And within these jurisdictions, we deal with two or three departments. Such a situation is a severe detriment to our efficiency. Motor carriers now must have numerous staff members versed in the regulations of each state in the areas of licensing, permitting, fuel taxes, and various third structure taxes. The current system is a jungle where neither the states nor the carriers are ever certain exactly what is going on.

One example of some of the confusion which exists is illustrated when a state is tardy in supplying a carrier with the compliance stickers which must be affixed to each and every tractor in the fleet. A state's rules may require this sticker to be in

place by January 15th, but it sometimes is not mailed until two weeks or even a month after that date. Of course, the state generously waives the requirement until the stickers arrive, but it is no easy task to distribute a sticker to each of a thousand or more pieces of equipment scattered across the country. Multiply this by 48 and you begin to see some of the problems with which interstate carriers are forced to deal.

The states are well aware of the problem, but there is no evidence of any coherent attempt to solve it. It will only be resolved at the federal level, and I submit that unless action is taken, and taken soon, the present quagmire will only become more difficult to escape from. Action on this problem will vastly reduce unnecessary paperwork and confusion which now entangles both the states and the motor carriers.

I urge the Congress to take whatever action is necessary to help national carriers deal with the confusion and inefficiency which arises from the current methods of licensing and tax reporting among the various states.

I have recently seen legislation which has been introduced into the House of Representatives. This bill, HR 3222, has been titled the National Motor Carrier Productivity and Safety Improvement Act of 1985. It is also referred to as the Moody Bill. This bill, as written, has much that is of merit, and I have offered my support to the gentleman in the House who are co-sponsoring this important piece of legislation.

I would also offer my support to any legislation introduced into the Senate which would address the issues I have mentioned today. I would hope that such legislation will soon be introdced here in the Senate, and I took forward to examining such a bill.

Thank you.

[The following information was subsequently received for the record:]

CRST INTERNATIONAL,
Cedar Rapids, IA, October 17, 1985.

Senator ROBERT PACKWOOD,
Committee on Commerce, Science, and Transportation,
508 Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR PACKWOOD: In response to your follow-up questions about my testimony before the Subcommittee on Surface Transportation on September 9, I would make the following comments:

Regarding the problems associated with state regulations which affect interstate trucking operations, I feel these problems fall broadly into two categories—the methods by which states license and tax and the ways in which individual drivers are licensed. I feel both of these problems might best be addressed by some degree of federal preemption—which is certainly within the jurisdiction of the federal government as they affect interstate commerce.

One recent example of a problem CRST has experienced in the taxing/licensing area points out how uniformity among the various states could greatly enhance productivity and efficiency. The state of West Virginia levied almost $1900 in fines against CRST in the month of August for failure to have the required fuel decals on CRST trucks operating in that state. We received the decals on June 7, and they were required to be in place by July 1. Our company operates over 1300 tractors, in all 48 contiguous states. Three weeks is simply not enough time to distribute these decals to our equipment. The decals had been paid for, but we still were fined for failure to have them affixed to the tractors. If you multiply this situation by the 48 states, you begin to see the logistical problems we interstate truckers must face. In my opinion, such problems could be eliminated if some degree of uniformity could be achieved. Our Licensing Department spent many hours and a lot of money trying to comply with West Virginia's requirement, but we were still fined a great deal of money, and this is by no means an isolated case.

It seems unfair that the trucking industry, which is already the most heavily taxed industry in the nation, should be penalized even more when we are unable to comply with state regulations, which expect the unreasonable.

As I pointd out in my testimony, I feel federal action must be taken to ensure that drivers, who operate interstate, are qualified to handle the equipment they are given. It seems that a national interstate drivers license is the obvious solution. These licenses could be issued by the individual states, after a driver has passed a uniform test consisting of a written and a driving test developed at the federal level. As amazing as it may sound, a total of 24 states do not require a driver to prove his or her ability to operate a tractor/trailer combination before issuing a license allowing them to do so. There is also a serious problem with drivers holding mutliple licenses from various states. These drivers are then able to spread tickets and cita-

tions over these mutiple licenses to avoid suspension or revocation of their driving privileges. From a safety standpoint, this is totally unacceptable. A 1981 survey reported that 25% of interstate drivers hold more than one license. If we are to fulfill our obligation to the motoring public at large, this dangerous practice must be ended.

As to specific recommendations, I would urge you to consider the bill designated HR 3222 as a model for Senate action. HR 3222 addresses most of the concerns of both interstate carriers and shippers. It includes a provision for a "National Carrier" class of carrier, which I find eminently reasonable, since carriers which would be so designated play a key role in our nation's interstate commerce. I feel very strongly that the time has come for Congress to recognize the fact that our national economy has beome an intricate web of businesses for whom state lines are becoming more and more of a barrier to growth—to the detriment of all concerned. I find it absurd that a major company with production facilities in two locations within a state must in some cases pay a higher freight rate and use a different carrier, to move product between those facilities, than would be the case on moves between facilities located in different states. In some cases, the commission or department charged with regulation of intrastate commerce is heavily influenced by powerful groups interested only in maintaining their virtual monopoly on motor carrier transportation within that state. The increased cost, which inevitably goes with monopolistic practices, is ultimately passed on to the customer. In light of the increasing global competition many American businesses are facing, it seems Congress should take a long, hard look at the big picture, which is far too often ignored by selfish interests with a narrow, myopic view.

In response to your second question, I would say there is no longer any need for the Interstate Commerce Commission to perform any economic regulatory function whatsoever. If this is the context in which your question was framed, I would answer "no". On the other hand, there is a need for federal involvement in the trucking industry, especially in the area of safety. I feel this involvement would most appropriately be placed within the Department of Transportation. We need to do whatever is necessary to make our nation's highways safe for all highway users. I have already outlined some things I feel should be done, but there are other suggestions which should be considered.

The Department of Transportation should be adequately funded and staffed so it is better able to ensure that unsafe trucks and unsafe drivers are removed from our nation's highways. As the insurance crisis within our industry continues, and as the amount of hazardous material which is transported over congested highways increases, the safety issue will loom larger. We cannot afford to allow unsafe equipment and drivers to endanger American motorists.

I hope these responses will contribute to the debate in the upcoming months. If I can be of further service to you or to the Subcommittee, please do not hesitate to contact me.

Sincerely yours,

HERALD A. SMITH, JR.,
Chairman of the Board.

Senator PACKWOOD. Thank you.

Mr. Applegate.

Mr. APPLEGATE. Good afternoon.

I have had to change the context of my oral summary somewhat based on the conversations I have heard this afternoon.

The hot topic is the collective ratemaking, and I am kind of strong on that.

First of all, my name is Michael Applegate. I am the vice president of Applegate Drayage Co. I would like to thank the committee and Senator Packwood for inviting our company to relate some of our experience operating within the new motor carrier industry.

I would like to elaborate upon and clarify some of the text of my written testimony. To begin with, I want the committee to understand that an important key to the success of Applegate Drayage and our competitiveness in the marketplace is our financial strength. We have been in business for 40 years. We have been very conservative. And, in 1980, we even eliminated our long-term

debt. Consequently, we were not subject to the volatile interest rates. When we consider capital expenditures today such as new power units, new forklifts, or new trailers, we time the acquisitions to either utilize present cash-flows or use portions of our cash reserves.

Our financial situation is fairly unique, but I believe essential for any business enterprise that intends to survive the normal ebbs and tides of a free, market-driven economy. Applegate Drayage participates in two major tariff bureaus, the Western Motor Tariff Bureau which is headquartered in southern California and publishes our California intrastate tariffs, and the Rocky Mountain Motor Tariff Bureau which publishes our interstate class rate tariffs; 75 percent of our business is based on those interstate Rocky Mountain class rates. The class rate tariff is Rocky Mountain 583, and it has pretty much become the pricing standard for all carriers in the Western States. It is from this level of rates that we establish the foundation from which we discount for the various customers.

By discounting, we provide for or we are able to recognize a customer's efforts to provide shipping efficiencies for the carrier. Beginning with our retail level of pricing, we have retail customers. You know, some lady calls up and says will you take 200 pounds of personal effects to San Francisco for us? And we say sure. Well, it is very costly to run that truck over to pick up those 200 pounds if that is the only thing you do and all you do is make one delivery when you make that delivery. When we back in at Maryland Cup Corp., we fill up three or four trailers, and there are several thousand dollars' worth of revenue. Maryland Cup is going to get a better discount than is the lady who gave me 200 pounds.

Being on the board of directors of both bureaus, the experience is beneficial to me. Western Motor is a relatively small, regional bureau. Rocky Mountain is a large, transcontinental one. The rate regulation that we have had in the past has really supported—well, it is an inflated level of carrier rates. It was prior to 1980. It was a very high level. Today we have that established retail level, but from that with today's flexibility, without the ICC regulating the rates that we charge, we are able to discount, account for each customer's different qualities or his needs. J.C. Penney's gets one, and Ralston Purina gets one. The small shipper—and I do not know how to classify your small shippers—it was mentioned earlier that a small shipper was someone with 10 to 100 employees. Well, we are able to give people like that a 25- to 35-percent discount. It depends on the classification of his commodity, the susceptibility to damage of the commodity. The amount of liability the shipper wants us to assume has a great deal to do with it.

The process we have developed in the bureaus with general increases, and the general increases are facilitated by the collective ratemaking. It is important to shippers and to carriers. It is the only practical method for a carrier, particularly a small carrier such as ourselves, to institute a general increase, and from that, with your specific shippers, you can then negotiate what increase they are willing to accept.

In light of today's crises with the cost of health care, the insurance premiums are unbelievable. Applegate Drayage, for example,

was not dramatically impacted by that. We are an old, established carrier. We have a very good experience rating, and we only took a 60-percent increase. Some carriers have taken 400 and 500 percent. It is still dramatic, but it did not significantly impact us.

A crisis like the insurance problem is a good example where the rate increase, through the collective ratemaking process, makes it easy for a little guy like Applegate Drayage to go to the general shipping public who does business with him and say, we have taken a general increase.

If we have customers that have a problem with something like that, they come to us and they say, what exactly are you doing, and I can sit down with them and say, look, my insurance went here; your revenue is right about here; cost of delivering to the Japanese market in downtown San Francisco is this; consequently, your rates have got to come up somewhat to offset some of our increased expenses. Each one of those have to be addressed individually.

I state in my written testimony that there was no need for antitrust laws nor antitrust immunity, and that is not true, nor is that my point. The point that I was trying to make was that the collective ratemaking controversy is unnecessary because collective ratemaking is not anticompetitive. It is efficient and it enhances our competitiveness by allowing us an efficient and compensatory standard of pricing.

Senator PACKWOOD. Would you not know what to charge yourself, if you didn't have the rate?

Mr. APPLEGATE. LTL shipments are very difficult to price for the general public. It is very difficult. It establishes that standard for us, from where we can begin.

Senator PACKWOOD. You mean you don't really know your own costs?

Mr. APPLEGATE. Truckload is easy. I know my costs on LTL. I can do a time-and-motion study for a specific customer and I spend 10–15 percent of the revenue to execute the pickup. I will spend another 35 percent on line haul, and then the preponderance of all that revenue is taken up in delivery.

Senator PACKWOOD. I am curious. You take your rate, and this is the base from which you discount.

Mr. APPLEGATE. Right.

Senator PACKWOOD. And so if the rate is $100 a ton, you say all right, $20 a ton off. And you wouldn't know what to charge but for the $100 rate, which you don't charge anyway.

Mr. APPLEGATE. It depends on the customer. Not everybody gives you 1 ton, and that is to attack the term that you use. But the lady that gives me 200 pounds, it is going to cost me $60 to handle that shipment.

Senator PACKWOOD. But here is where I am confused. Wouldn't you know that, whether or not there was a rate schedule?

Mr. APPLEGATE. To a certain degree, but not to the degree that we can build at the bureau with all of the data that they have the expertise.

Applegate Drayage is run by two people, my father and myself. There is not a hell of a lot of expertise there.

Senator PACKWOOD. Are you speaking for your father today, too?

Mr. APPLEGATE. Specifically him. Put that in the record.

Senator PACKWOOD. I will mail him a copy of the transcript.

Mr. APPLEGATE. Don't you dare.

Senator PACKWOOD. Go ahead. I interrupted you.

Mr. APPLEGATE. All right. Well, I am just about done.

We need a vehicle like the Tariff Bureau with access to the industry data, to provide us with that uniform base matrix. The bottom line is, the marketplace is going to govern the price that I command, not collective ratemaking. It provides a standard for us.

Thank you.

[The statement follows:]

STATEMENT OF MICHAEL T. APPLEGATE, VICE PRESIDENT, APPLEGATE DRAYAGE CO.

INTRODUCTION

Applegate Drayage Company is a family owned business with annual sales of approximately five million dollars. We operate trucks in Northern California and Northern Nevada. There are more than one hundred people working for the company. We operate seventy five power units and one hundred fifty trailers. My father started the company in 1945 as a public warehouse company with local drayage.

I began working for the company, full time, in 1974. My responsibilities have focused upon the marketing of Applegate Drayage. I have been active in two tariff bureaus for the past eight years and have participated in the collective ratemaking process. The experience and knowledge gained working with the bureaus has provided me with helpful insight, beneficial in developing effective marketing strategies.

The preponderance of my time is spent working with our customers. The information gathered from customers helps keep us abreast of our competition. The information about rates and services of competitors is important in influencing the direction we move with our marketing strategies.

The following figures are some of the operating statistics of Applegate Drayage Company, prior to the Motor Carrier Act and the ensuing years.

Year	Annual revenue in millions	Operating ratio
1979	5.2	89
1980	5.3	92
1981	5.0	92
1982	4.8	93
1983	5.0	91
1984	5.1	92
1985 (first half)	2.8	90

It is difficult to draw any significant conclusions regarding deregulation from these data. However, in the light of the deregulated from these data. However, in the light of the deregulated transportation environment, the general health of the economy and the increase in motor carrier competition, we are doing well in this climate.

THE IMPACT OF DEREGULATION

The economics of the 80's require increases in productivity. The regulation of motor carriers provided for some operating efficiencies. However, the inefficiencies that were abetted by rate regulation outweighed the value of the operational efficiencies.

Regulated entry did promote the productivity of truck routes serving small communities, but the entry into the market place has changed all of that.

One example: Applegate Drayage Company was one of the three ICC authorized motor carriers serving the Quincy and Susanville area of Northern California. Today, there are an additional five carriers with this authority. Applegate Drayage has reduced the frequency of service into this area and the other two original carriers have stopped serving it completely. It is a costly market to serve because the

volume of traffic is low, there is no return traffic and the population of the area is low. To date, there has been no rate increase into this market because the competition for that traffic is too great. Market force determination of pricing has motivated the carriers serving Quincy and Susanville to neither make the routes profitable or leave it to the carriers that can.

Another example: Allegate Drayage Company was one of about ten authorized carriers competing in the Reno/San Francisco traffic lane; this is the largest traffic lane in the Northern California/Northern Nevada market. Today there are at least twenty carriers competing for that traffic. Applegate Drayage is flourishing because of the inherent efficiences of a small, well established operation. Consequently, the carriers that cannot attain adequate margin to compete in this traffic lane must look towards other markets where they can be competitive. Rates in the Reno/San Francisco traffic lane are very reasonable; the shippers with the "attractive" traffic are getting discounts as high as 50%.

The point I am trying to demonstrate with these two examples is: easing entry and allowing the market forces to determine the levels of the rates has not resulted in any less service nor unreasonable rates. The facts of the situation demonstrates that both markets are enjoying an increase in the choice of services and reasonable levels of rates.

Motor carrier pricing has evolved from carrier justified/Commission apppoved rates to shipper/carrier negotiated rates.

Collective ratemaking enhances the efficient standard for pricing that has evolved since the implementation of the Motor Carrier Act. The collectively established base matrix of uniform rates (bureau rates) provides a starting point from which all shippers and carriers can negotiates rates tailored to the particular needs of that shipper's business. The base matrix of rates allows shippers to readily and accurately compare carrier rates. Bureau rates also provide carriers with a knowledgeably compiled level of compensatory rates.

The Motor Carrier Act provided that rates will be reasonable and nondiscriminatory. The initial rate activity that ensued, following the relaxation of rate regulation, subsided. The economics of the new, deregulated environment, coupled with the general state of the economy, inhibited any use of noncompensatory rates. Attempts by new entrants to capture market share with reduced rate levels were not prevalent and when this did occur, it did not last for any length of time. The reduction in margin per shipment prevented any cross subsidization.

Fears expressed about predatory pricing were unfounded. A carrier could not afford to waste resources in an attempt to force a carrier out of a market. An attempt would be futile anyway, with the number of new entrants into many of the traffic lanes.

Applegate Drayage does maintain different discounts for its various customers. Differences in discounts are not discriminatory. The discounts are predicated upon unique factors that lend to the operating efficiency of the carrier. The discounts allow the carrier to acknowledge the efforts of the shipper to provide cost savings qualities in their shipping, such as: volume, frequency, packaging, unitizing, loading time, unloading time, commodity value and carrier liability. A shipper who ships in small quantities and/or infrequently does not allow a carrier any operating efficiencies. That shipper will have to pay a higher rate. It would be anti-competitive if the small shipper's rates were to be subsidized by the large shipper.

The decline in truckload traffic handled by LTL carriers was not permanent. Once again, the economics of the market place provided the proper perspective for everyone involved. Truckload carriers cannot provide equipment with the frequency nor regularity that an LTL carrier can. LTL carriers have terminals with additional equipment and manpower available and truckload carriers do not always have the ability. Consequently, the shipper is willing to pay a little bit more to have the equipment availability.

CONCLUSION

Government regulation of the private sector is one of the most deteriorating influences impacting American capitalism. Our experience, operating within a government regulated economic environment, in contrast to, operating within a market place regulated environment, is terrifying.

Market place regulation is extremely efficient. The competition motivates a business enterprise to continually reduce and control expenses; the increase in productivity facilitates competitiveness in the market place. That is the only way to retain or gain market share.

We would like to see the Interstate Commerce Commission completely dismantled and the motor carrier industry totally deregulated.

We do need to have Federally established safety regulations that will ensure uniformity throughout the nation.

The entire issue of collection ratemaking seems absurd. The market place is going to determine the rates. There is no need for anti-trust laws nor anti-trust immunity. Collective rate-making and tariff bureaus are not anti-competitive, they facilitate the exchange of ideas and information among shippers and carriers. We would like to preserve the right to collectively meet and establish the base matrix of uniform rates.

Senator PACKWOOD. I would be curious about the two of you, Mr. Schneider and Mr. Smith. Mr. Applegate testified on the necessity for the rate, the Bureau fixed rate, so that you can discount from it, and that you wouldn't otherwise have a base of estimated costs from which to make your discounts.

Mr. SMITH. Senator, I was an LTL carrier at one time and we were able to determine our own rates. Instead of having 35 or 45 different classifications which the rate bureau has, you know, the yellow blade as opposed to the red blade, we narrowed it down to four classifications with a minimum so that the young lady with her 200-pound shipment way out in the boonies somewhere, we had a minimum charge for her which protected us and we were able to analyze our costs on a day-to-day basis and watch our own rates. And we found that we could operate much clearer, much better, and much more profitably, too, because we knew what our costs were, and therefore we knew what our rates had to be.

And, by the way, we were considerably below the Bureau rate levels. We were much more profitable than the Bureau carriers in our area.

Senator PACKWOOD. And much more profitable than you were when you were in the Bureau following the rates.

Mr. SMITH. That is right.

Senator PACKWOOD. Mr. Schneider.

Mr. SCHNEIDER. One of the problems that the industry faced in the past is the fact that most of the carriers in the industry did not know their cost.

Senator PACKWOOD. Did not?

Mr. SCHNEIDER. Did not. And some of that was the fact that they were regulated, and some of it was the fact that the Bureaus did a lot of work for a lot of the carriers. And, as a result, you really didn't need to know it. But when you are working in an industry that is as competitive as we are today, you really have to know your costs and you have to know them by shipper, by commodity, by length of haul and a number of different ways. And you have to price appropriately. And it makes more sense to me to price directly, rather than off of somebody else's base, and you just go in and negotiate what you particularly need on that particular movement or shipment.

And in my judgment, that is the way the whole industry could operate in price.

Mr. SMITH. In the past, you needed your franchise, you needed the rate bureaus. And with the protection of the Interstate Commerce Commission, that is all you needed. You didn't need to know your costs. But today, you had better well know your costs and you better be very efficient or you are not going to last too long.

Senator PACKWOOD. I would assume that if you don't, someone will come along to compete with you who does know their costs.

Mr. SMITH. That is right.

Mr. APPLEGATE. For a small carrier, it is very, very difficult to go out and put these general increases into effect. The Bureau, what we do, we can put an increase in across the board to cover the cost, say, of rising insurance or something along those lines; then we can address the specific issue, the specific needs of specific shippers at that time.

It is not that we don't understand our costs or know our costs. I mean we probably understand our costs as well as the great big guys because I can sit down and do a time and motion study on a specific truck with a specific driver for a specific account and understand that.

Senator PACKWOOD. How do you know—here is where I am still confused. How do you know how much to discount?

Mr. Granberry read the statement he had had from the company that was discounting 35 percent, 40 percent, 45 percent. Assuming you are not going to go with the established rate anyway, how do you know how much to discount from the established rate?

Mr. APPLEGATE. It depends. I have got customers that tender me 2,000 pound pallets that are stretch wrapped. That is wonderful traffic. A forklift picks it up, puts it over there. He gets charged, say, in the ball park of $60 between Reno and San Francisco to move that pallet, that 2,000 pounds.

When Tam Brands, Tampax, those little tiny cases—and they are very, very light—he wants to ship 2,000 pounds, gosh, it is going to be a couple hundred dollars. There is a lot of manpower. It is labor intensive because you handle it. The consignees are usually grocery——

Senator PACKWOOD. I understand that. But if the established rate to ship it is $1,000 and you are not going to charge $1,000, how do you know how much to charge?

Mr. APPLEGATE. Based on the amount of time you are going to spend handling it.

Senator PACKWOOD. Wouldn't you know that without the $1,000 rate bureau rate?

Mr. APPLEGATE. Oh, certainly. But why I am saying the general increase is important is so that we establish that for the retail customer. We have a lot of retail customers. We go into some very rural areas—Eureka, CA, and Susanville, CA. Those are small communities.

Those guys get a different level of rates than the people that ship between Reno and San Francisco, the heavy traffic lane. It makes it simpler for us. It is cost effective for a small carrier; that is all.

These guys are pretty good-sized truckload carriers.

Senator PACKWOOD. Gentlemen, I don't think I have any more questions. I appreciate closing with a panel of three operators. It is very, very helpful. It has been a most illuminating hearing this morning.

Thank you for waiting this long. I appreciate it.

Mr. SCHNEIDER. Senator, it has also been very enjoyable to see how forthright and straightforward and knowledgeable you are.

Senator PACKWOOD. Well, thank you.

[Whereupon, at 1:02 p.m., the hearing was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

ROADWAY SERVICES, INC.,
Arlington, VA, October 11, 1985.

Chairman JOHN C. DANFORTH,
Senate Committee on Commerce, Science, and Transportation,
497 Senate Russell Office Building, Washington, DC.

DEAR SEN. DANFORTH: On behalf of Roadway Services and its motor carrier subsidiaries, I would like to submit the following comments in support of the position taken by the Regular Common Carrier Conference at the Senate Commerce Committee's annual oversight hearing on the Motor Carrier Act of 1980.

Roadway Services is a transportation holding company which owns Roadway Express, one of the nation's largest motor freight common carriers; Spartan Express, a regional LTL carrier, Nationwide Carriers, an irregular route truckload carrier; Roberts Express, a general commodities carrier of time-sensitive shipments; and Roadway Package System, a new small shipment carrier for packages weighing up to 100 pounds.

As a member of the Regular Common Carrier Conference, Roadway Express has been and continues to be an active participant in helping to formulate that organization's policy concerning the issue of economic regulation of the motor carrier industry. We believe that the balanced approach to economic regulation embodied in the Motor Carrier Act of 1980—if properly implemented by the Interstate Commerce Commission—would benefit the interests of the trucking industry, the shipping community, and the public. We also believe that any further move toward total deregulation, either through administrative or legislative action, is not warranted and will only worsen the already chaotic conditions surrounding the trucking industry. Finally, we fully support the retention of antitrust immunity for collective ratemaking, pointing out that the reforms contained in the 1980 Act have resulted in an open and competitive ratemaking process. This process in conjunction with open entry, has allowed shippers to benefit from what must be described as a buyer's market. We oppose any changes in economic regulation which ignore a fundamental tenet of transportation policy—to encourage sound economic conditions—believing that such changes ultimately will not serve the interests of carriers, shippers, or the public.

With this final oversight hearing, Congress has now completed its five year review of the Motor Carriage Act of 1980 with fairly predictable results. Those who have benefited from a less regulated environment have praised the Act and asked for total deregulation while those who have not benefited or have been hurt have opposed efforts to further deregulate through either Congressional mandate or ICC action. It is interesting to note that one of the major goals of the 1980 Act was to improve productivity. Yet despite successful labor productivity improvement programs at many carriers; despite increased flexibility in union contracts; and despite the larger capacity equipment made possible by the STAA, industry productivity—as measured by ton miles per employee—has actually declined about 4 percent since 1980.

This loss in productivity, coupled with a declining revenue base, has resulted in an industry which increasingly finds itself unable to provide the public with efficient and economic service.

The testimony presented by the American Trucking Associations and the Regular Common Conference makes what we believe to be a convincing case that general freight, full service carriers have been hurt by the changes in economic regulation brought about by the Motor Carrier Act of 1980.

In adapting itself to these changes, the industry has been further buffeted by a tremendous increase in its level of tax paid to maintain the Highway Trust Fund, by a major recession, by the uncertainties surrounding the purchase of new equipment and by the potential liabilities under its pension programs. To this we can add a tax system weighted heavily against labor intensive industries and which results in an effective tax rate for trucking in excess of 38 percent.

It is for these reasons that we believe any efforts to further deregulate the trucking industry are ill timed and very likely would lead to further instability in the general freight sector of the industry. Further deregulation, while perhaps yielding short term benefits to some shippers, will not, in the long run, help to promote safe, adequate, economical and efficient transportation.

Thank you for your consideration of these comments,

Sincerely yours,

TIMOTHY P. LYNCH,
Director, Government Relations.

SHIPPERS NATIONAL FREIGHT CLAIM COUNCIL, INC.,
Bethesda, MD, September 30, 1985.

Mr. LLOYD BEASLEY,
Printing Clerk, Senate Committee on Commerce, Science, and Transportation, SD 508, Washington, DC.

DEAR MR. BEASLEY: Based on our telephone conversation today, I understand that the hearing record for the hearing of September 19 will be a trucking oversight record, while the record for the hearings of September 20 and 27 will be deregulation hearings and record.

By arrangement with Karen Phillips, no testimony was presented at the oversight hearing of September 9. Instead, SNFCC testimony was presented at the deregulation hearing of September 20 (a prepared statement by Mr. Augello and oral testimony by the undersigned).

We would not ask to duplicate the printing of the Augello testimony in both records but we would appreciate it if a copy of this letter could be included in the transcript of the September 9 hearing. Any interested person seeking to find the SNFCC testimony would thus be alerted to seek it in the deregulation hearing transcript.

Thank you for your cooperation.

Sincerely,

ROBERT E. REDDING.

H.E. BUTT GROCERY CO.,
San Antonio, TX, August 29, 1985.

Chairman BOB PACKWOOD,
Surface Transportation Subcommittee of Senate Committee on Commerce, Science, and Transportation, United States Senate, Washington, DC.

DEAR MR. CHAIRMAN: We respectfully request that this statement be entered as a part of the record in the Motor Carrier Act Oversight Hearing to be held September 9, 1985.

The Motor Carrier Act of 1980 has produced significant benefits for the food industry of the United States and for most segments of American industry. The changes to date have been dramatic and far-reaching, but the course of change is not yet complete. The process of competitive change which is underway should continue to cause significant improvements in the motor carrier industry for several more years.

Some of the key improvements that affect the food industry are:

Developments of new types of trucking services that cater to the needs of individual shippers.—Regulatory freedom has allowed truckers to tailor services to the needs of individual shippers and to develop new services as required. The rapid expansion of irregular route truckload carriers is one of the more important examples of improved service.

Motor carriers have become more efficient.—Flexibility in operating rules and the competitive market place have caused most truckers to become more efficient and to lower operating expenses. These changes have been reflected as lower rates for shippers. Many carriers are now offering more single-line services that eliminate extra handling of cargo and duplicate accounting. Competition has forced most carriers to look closely at operating costs and to eliminate costs that are not fundamental to the service provided. Service at all levels of the system has improved as motor carriers have improved their efficiency and new carriers have developed services to meet the identified needs of shippers and receivers.

More motor carriers are operating today.—Many American businessmen have taken advantage of the regulatory freedoms and have invested their money in the motor carrier industry with the result that most shippers have many more carrier

alternatives in a competitive industry. Shippers now have a wide range of carriers, types of service, and costs that they can choose from when trying to fill a shipping needs.

Private fleets are more efficient also.—New freedoms for backhaul have in many cases at least doubled the ability of private carriers to develop suitable backhauls particularly in the grocery industry. These new backhaul opportunities as well as trip leasing and the ability to secure and use motor carrier operating authority have allowed most private fleets to reduce miles travelled without a payload. This has caused most private fleets to significantly improve operating efficiency. Also, private fleet operators take advantage of new services offered by for-hire truckers to eliminate trips that are inefficient for the private fleet.

Great progress has been made and will continue to be made. It appears that a competitive trucking industry that is relatively free from regulation can adapt and change quite rapidly to the benefit of the shipping public. The biggest obstacles to improvement have been inconsistent state regulations and some state regulatory bodies that fail to recognize that change is fundamental to growth and improvement. In fact, some state agencies seem to genuinely believe that the inflexible regulations of twenty years ago actually produce a better trucking system than the current interstate system which is responsive to the needs of shippers. Distribution is in many cases still hampered by rigid and inconsistent state regulations which restrict competition in intrastate traffic and thereby hamper the free flow of business from distribution centers and manufacturing plants in states which continue to maintain this rigid type of regulation.

We feel that the members of Congress are to be congratulated for their courage and conviction in the free enterprise system. The American trucking system has improved itself greatly in the last five years and is now much more efficient. An efficient trucking system is vital to America's efforts to improve the efficiency of all industry so that American business is competitive in international trade.

Please do not take away any regulatory freedoms that are currently enjoyed. Also, please eliminate the many inconsistencies in state regulation of trucking.

Thank you for your consideration of our views.

Respectfully submitted,

F.P. DALEIDEN, *Director of Traffic.*

ANDERSON INDUSTRIES, INC.,
Elkridge, MD, September 4, 1985.

SURFACE TRANSPORTATION SUBCOMMITTEE,
Senate Committee on Commerce, Science, and Transportation, 428 Hart Building, Washington, DC.

GENTLEMEN: Do not eliminate the Interstate Commerce Commission.

Anderson Industries Inc. is a small firm which has been in business since 1963. By small, I mean sales of less than $1,000,000.00 per year. We produce fiberglass panels and auto body parts for replacement or reproduction of antique automobiles. Our shipments are always less than truckload, and seldom are shipped beyond a distance of 1,000 miles.

We have had difficulty in securing motor carrier service because some of our products are light and bulky, even though the small town of Elkridge, Maryland, is only twelve miles from Baltimore. We are not sure whether de-regulation has helped us, but we recently were convinced that the Interstate Commerce Commission can be helpful and should be continued to protect small businesses such as ours.

The experience referred to above, involving the I.C.C. came about when Purolator Carrier started invoicing us and our customers (when we shipped collect) exhorbitant freight charges. One example is enclosed, indicating freight charges of $667.04 for an eighty (80) pound shipment to Dennis Massachusetts. The freight charges on this shipment exceeded our invoice to the customer—our price of $335.50 versus freight charges to $667.04. This is only one of many such incidents. We have been hounded by collection agencies, as have our customers, since Purolator Courier turned over these excessive bills to them.

The good news: Mr. Robert E. Johnson, Special Agent, Office of Compliance and Customer Assistance, Interstate Commerce Commission, 970 Broad Street, Newark, New Jersey, followed up a complaint and his report of July 26, 1985, reads, in part, as follows:

"In regard to the problem with Anderson Industries, I spoke to Ms. Elizabeth Henoch, Director of Traffic. It appears Purolator arbitrarily routed the shipments

via priority air rather than the standard two (2) day service noted on the bill of lading freight bills. The charges on several bills submitted by Mrs. Anderson have been drastically reduced and corrected bills will be forwarded. In the interim the Credit Mediators, Inc. have been ordered to discontinue their collection efforts."

This clearly illustrates one type benefit the I.C.C. provides to small shippers. Going to civil court with a number of claims, in varying jurisdictions, was not a viable alternative. Without this help from the I.C.C., we should undoubtedly have lost the affected customers. Our business, heavily dependent on repeat orders and word-of-mouth advertising, would have been damaged severely.

Sincerely,

RUTH S. ANDERSON, *Treasurer.*

SOUTHERN TEA CO.
Marietta, GA, August 26, 1985.

Senator JOHN C. DANFORTH,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, SD-508 Dirksen Senate Office Building, Washington, DC.

SENATOR DANFORTH: My comments have to do with motor carriers only. It is my opinion that competition brought about by easier entry since deregulation has been extremely helpful to shippers and receivers in reducing transportation costs if they have taken advantage of negotiating their rates with motor carriers.

I have not seen a tremendous difference in less truckload service since deregulation but there has been much improvement in truckload service due to irregular route and contract carriers now handling truckloads only. While I am fairly satisfied with service, I am not, and probably never will be satisfied with transportation costs. I have negotiated truckload rates which have reduced our costs considerably, but less truckload rates have continued to climb and even with negotiated rates and better than average discounts I certainly am not satisfied. I do feel we can remain competitive in our field with the transportation service and costs we presently have and that we are being treated fairly by the motor carriers we are using.

Rates bureaus, national classification and collective rate making should be allowed to continue so that everyone can have a base from which rate negotiations may begin. Those three are essential to smaller shippers and smaller carriers, too, who do not have traffic departments or qualified personnel to negotiate and publish rates.

The Interstate Commerce Commission, as it presently functions, serves no real purpose and should be abolished. Safety regulations and insurance requirements could be relegated to some other agency for enforcement. However, if the Interstate Commerce Commission is allowed to continue, Congress should most definitely require them to enforce existing laws and regulations. Congress should also put a stop to the petty bickering and dissension that now obviously is prevalent in the Commission!

Respectfully submitted,

WENDALL B. WALTON,
Manager, Distribution and Traffic.

FRITO-LAY, INC.
Dallas, TX, August 21, 1985.

Senator PACKWOOD,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR PACKWOOD: The benefits of the Motor Carrier Act of 1980 far outweigh any negatives. For example, truckload shipping costs have stabilized, and in some instances, have been reduced. Less than truckload shipments, when discounted, are relatively stable.

An early concern was service, particularly service to small communities. These concerns did not materialize as competition in the motor carrier industry has imposed service overall.

Instead of an industry propped up with government regulations, the trucking industry today is beginning to be a viable, competitive force that benefits the public at large with stable pricing and reliable service.

The need to complete the deregulation of the motor carrier industry is evident when one looks closely at how the current restraints force carriers to continue to operate inefficient, costly, empty miles that waste natural resources and contribute nothing to productivity.

Two major undertakings that need to happen are first, complete the deregulation of interstate motor carriers with the exception of the Insurance and Safety requirements. These could be handled by the Department of Transportation. Taking this action would mean eliminating the economic regulations pertaining to the for-hire motor carrier industry. The operation of the free market in a highly cometitive industry would assure that small shipments, especially small shipments to small communities, would be handled in a satisfactory manner. The ingenuity of American Entrepreneurship would find ways to fill the void if a void existed. Secondly, the Congress should take firm steps to insure that interstate truck transportation is freed to the morass of state regulations, which are extensive and variable in each state.

Intrastate transportation, quite often, is an extension of an interstate operation. There exists little or no real justification for the states to have such a stranglehold on truct transportation. It probably grew in much the same way as the interstate regulation did over the years and will need the same level of "surgery" to correct. Intrastate insurance and safety requirements should be administered by the states covering intrastate operation with the same degree of attention as that proposed on the Federal level under deregulation.

Thank you for considering these points of view.

Sincerely,

W.J. MORGAN.

NATIONAL ASSOCIATION OF MANUFACTURERS,
Washington, DC, September 12, 1985.

Hon. BOB PACKWOOD,
Chairman, Surface Transpcrtaton Subcommittee, Senate Committee on Commerce, Science, and Transportation, Washington, DC.

DEAR MR. CHAIRMAN: As you know, NAM was unable to testify during the September 9th hearing on oversight of the Motor Carrier Act of 1980. Our views, however, were addressed in the testimony by representatives of Ad Hoc Motor Carrier Regulatory Reform Group. This letter serves to emphasize our position that the results of the Motor Carrier Act of 1980 (the Act) have been positive and that further dergulation of the trucking industry is both desirable and needed.

Since the easing of entry requirements for new firms following implementation of the Act, 14,000 new entrants have obtained poerating authority from the Interstate Commerce Commission. This shows that the industry is viable and dynamic. In addition, the increased competition has helping to maintain transportation costs to shippers at more reasonable levels than existed prior to deregulation. For instance, the freight costs on a 100 weight basis today for Lever Brothers is below its 1980 level.

The elimination as of July 1, 1984, of antitrust immunity for rate bureaus on single-line rates has given shippers the ability to "shop around" and negotiate for the best price among carriers. Efficiency has thus become one of the chief characteristics necessary for the survival of a carrier. Not only has excess capacity fallen, but according to a 1983 report by the Interstate Commerce Commission, prices charged for shipping are now much more reflective of actual costs. Finally, the ability to ship commodities and products over the most direct interstate routes has proven to be a benefit to manufacturers, producers, carriers, and consumers.

While the Act certainly has contributed to efficiency and productivity gains, NAM believes it is time to move on and finish the job. There have been five years of partial deregulation, and five years of congressional oversight, and all indicators lead to the conclusion that both American business and consumers have benefitted. NAM thus encourages the enactment of legislation which will end antitrust immunity for joint-line and multi-line rates, and ensure that federal deregulatory actions are not frustrated by restrictive state laws, while maintaining safety as a priority concern.

Our position on antitrust immunity is supported by the findings of the Motor Carrier Ratemaking Study Commission as stated in its report to the President and Congress on June 1, 1983. Furthermore, removal of the antitrust provisions of the Reed-Bulwinkle Act will lead to even greater productivity and efficiency gains, as elimination of immunity on single-line rates has shown so effectively.

However, simply eliminating all immunity to federal antitrust laws for interstate shipments will not necessarily allow the benefits to accrue to all consumers, shippers, and carriers. Just this year, the United States Supreme Court upheld the power of rate bureaus to conspire to fix prices, depending on state law, in determining interstate rates in *Southern Motor Carriers Rate Conference, Inc.* v. *United States*. A recent report by Procter & Gamble indicates that it costs $1.36 per mile to

ship its laundry detergent from Dallas, Texas to Tulsa, Oklahoma, while it costs $2.52 to ship the same product from Dallas to Houston. By crossing state lines, the shipment is subject to interstate, rather than intrastate, rate regulation.

Other states have laws and regulations which severely restrict movement within their boundaries, inhibit the flow of interstate as well as intrastate commerce and reduce the effectiveness of the 1980 Act. New legislation must address this problem and, at a minimum, allow for reasonable access to distribution facilities as well as terminals.

A model for possible legislation in the Senate would be H.R. 3222, which was introduced by Representative Jim Moody on August 1st. H.R. 3222 not only would eliminate antitrust immunity for single-line rates, but it would establish the concept of a "National Carrier," which would serve three or more contiguous states. No state could enact legislation or enforce regulations relating to interstate or intrastate rates, interstate or intrastate routes, or interstate or intrastate services of a National Carrier. H.R. 3222 would also sunset ICC authority over entry requirements and routes, ending what the ICC Chairman has referred to as nothing more than "paper shuffling." Safety concerns would become the sole prerogative of the Department of Transportation.

The provisions of H.R. 3222 would apply only to firms which elect to become National Carriers. States would be free to enact and enforce legislation and regulations pertaining to intrastate shipments by other than a National Carrier.

NAM appreciates your long, active, and continued interest in promoting productivity and efficiency for an essential element of the American transportation system. We would welcome your support for further improvement during this Congress. Thank you for the opportunity to express our views.

Sincerely,

ALEXANDER B. TROWBRIDGE, *President.*

MEYER PRODUCTS, INC.,
Cleveland, OH, September 4, 1985.

SURFACE TRANSPORTATION SUBCOMMITTEE,
Senate Committee on Commerce, Science, and Transportation, 428 Hart Building, Washington, DC.

GENTLEMEN: I have been controller of Meyer Products, Inc. for over six years. This letter representing our position regarding developments since the passage of the Motor Carrier Act of 1980 is approved and supported by other top management at our company.

Meyer Products, Inc. primarily manufactures attachments (mounting) and scraper blades (moldboard) for trucks and farm tractors for use in scraping snow and dirt, etc. Meyer ships on a freight prepaid and freight collect basis, both in truckload and less than truckload quantities.

We strongly oppose and object to further de-regulation of trucking. In fact, within the past two years Meyer Products has experienced transportation problems never before encountered. These are:

Bankrupt carrier trustees filing lawsuits for tens of thousands of dollars for under charges on shipments going back five years.

Farm equipment and auto dealers are also faced with under charges on freight collect shipments.

Freight shipment brokers have contacted us, and without knowledge of which are screened as reliable by the Interstate Commerce Commission we could have used an illegal broker who could have used owner-operators or carriers without adequate insurance.

We have spent money for a consultant and an attorney on the above problems since 1983.

The Motor Carrier Rate Association Bureaus have assisted us by publishing clarifying freight classifications to prevent unreasonable under charge demands in the future, when carrier members of the association bureaus are utilized.

The National Classification Committee has approved similar clarifying classification ratings for publication.

It is my understanding that procedures today permit a court to refer a transportation controversy brought before it to the Interstate Commerce Commission for an expert, informal opinion. It is my feeling that this resource is very important and of great value to shippers, enabling decisions to be reached on the practical merit of a case, not legal technicalities. Antitrust action is often not an appropriate remedy

and the Department of Transportation cannot provide this needed protection to the shipping public.

Rate associations and the National Classification Committee provide price and service stability for marketing our products nationwide, as well as to Europe and Japan, and should be permitted to continue. Rate and classification committees provide reliable freight rates that we can use to price our products competitively and without fear of subsequent huge under charge demands. This is very important to small and medium sized firms like ours who do not have professional traffic departments.

Our freight bill auditors told us it is nearly impossible to audit freight bills for over charges when using individual carrier rate publications.

Due to the problems we have encountered over the past few years, we believe further de-regulation will harm rather than assist us, and thank your committee for this oppportunity to present our views.

Sincerely,

ROBERT D. CARLSON, *Controller.*

THE POTATO CHIP/SNACK FOOD ASSOCIATION,
Alexandria, VA, September 19, 1985.

Hon. BOB PACKWOOD,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science, and Transportation, U.S. Senate, 259 Russell Senate Office Building, Washington, DC.

DEAR SENATOR PACKWOOD: I am writing to you on behalf of the Potato Chip/Snack Food Association (PC/SFA), an international trade association representing producers of potato chips and snack foods. Members of PC/SFA range in size from large national manufacturers to small regional producers. The Assocation estimates that its members operate approximately 1600 over-the-road power units and approximately 24,000 sales trucks.

PC/SFA submits this letter for the record in the Subcommittee's Motor Carrier Oversight Hearings. The association whole-heartedly supports the concept of economic deregulation of the motor carrier industry. PC/SFA fully supports the goals and objectives of the Motor Carrier Act of 1980. We feel that the increased competition allowed under the Act has benefitted manufacturers, shippers, and the consuming public by offering a wider range of service and rate options. While the Motor Carrier Act has vastly improved the transportation industry, the recent rise in individual state regulations has imposed a substantial burden on fleet operators.

The lack of uniformity among the states in a variety of areas creates a substantial impediment to interstate commerce. The lack of uniformity may be found in several areas, including economic regulation, single source leasing, licensing, permitting, safety regulation, truck and fuel taxes and tax collection methods, third structure taxes and reporting and bonding requirements. Compliance with these various regulations imposes substantial costs on businesses. The burden is especially heavy for small businesses.

A recent study by the consulting firm, Aruth D. Little, Inc., indicated that the cost of compliance with the various state regulations is $800 per truck for fleets of 10 or fewer trucks. This figure represents only the cost of compliance, and not the cost of the actual permits, licenses, taxes, etc. The expenditure represents a dead weights loss for businesses, as it is one that results in no incremental increase in productivity or product quality.

There are several private groups working on the issue of state uniformity in these various areas. However, it is the view of the Association that uniform regulations in these areas will not be accomplished without some form of federal legislation.

Therefore, in exercising its oversight responsibilities over the implementation of the Motor Carrier Act of 1980, PC/SFA urges the Committee to consider legislation which would address the issue of uniformity of state regulation. This legislation should encompass not only state economic regulation, but safety, taxation and reporting requirements as well.

Our Association and its members would welcome the opportunity to work with your staff in developing such legislation.

Sincerely,

JOHN R. CADY, *President.*

THE COLEMAN CO., INC.,
Wichita, KS, August 30, 1985.

Hon. JOHN C. DANFORTH,
U.S. Senate,
Washington, DC.

DEAR SENATOR DANFORTH: Utilizing the services of regulated motor common carriers our company ships and/or receives freight of various kinds within and across the Midwest.

While we are generally pleased with the results of the Motor Carrier Act of 1980, we are opposed to any further elimination of economic regulations over motor carriers.

The uniform nationwide system of freight rates provided by motor carrier rate bureaus in the form of joint tariff publications is extremely important and useful to us. Among the benefits of bureau tariffs are predictability in rate levels and an ease of rate comparison where individual carriers offer differing discounts from class rates applicable by all motor carriers in a given area.

The proliferation of tariffs and rates, which appears to be encouraged by Interstate Commerce Commission policies, has made it increasingly difficult and expensive for us to obtain current and correct price information. Collective ratemking and motor carrier rate bureaus provide a valuable yet inexpensive tool which allows us to remain knowledgeable of common carrier pricing by providing us with simple and orderly tariffs of rates which provide a basis for comparison shopping among competing carrier's discounts.

At market, the choice of any particular manufacturer's goods is often significantly affected by the costs of transportation. Although the plethora of new individual tariff pages containing countless discount provisions makes certainty impossible, we have probably received a very good deal respecting the transportation of our products. We are, however, concerned that our competitors with greater economic clout may secretively be afforded advantages over us by receiving greater rate reductions based upon their market power and not cost savings.

We feel that statutory provisions requiring rate reasonableness and prohibiting discrimination, preference, and prejudice must continue in effect and be enforced by the Interstate Commerce Commission.

We suppport the continuation of collective ratemaking and the publication of rates by rate bureaus, and urge that:

1. No legislation be enacted that would further eliminate economic regulation of general freight motor transportation;
2. Collective ratemaking be retained without any further restriction; and
3. The Interstate Commerce Commission be instructed to review its regulatory policies, enforce the law as it is written, and consider the interests of small and large shippers equally.

Very truly yours,

DON A. PATTERSON,
Corporate Traffic Manager.

MICHIGAN STATE UNIVERSITY,
DEPARTMENT OF ECONOMICS,
East Lansing, MI, September 16, 1985.

Senator BOB PACKWOOD,
Chairman, Surface Transportation Subcommittee, Committee on Commerce, Science, and Transportation, Suite SD-508, Senate Office Building, Washington, DC.

DEAR SENATOR PACKWOOD: In connection with your recent hearings on the Administration's proposal for complete deregulation of the trucking industry, I should like to submit the enclosed article, entitled "Countervailing or coalescing Power," for the record.

I should appreciate having the article reproduced in the printed hearings, because it contains relevant evidence in support of the proposed legislation.

Thanking you in advance for your courtsey, I am,

Respectfully yours,

WALTER ADAMS,
Distinguished University Professor and Past President.

Enclosure [1]

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[1] The enclosure is in the Committee files.

STATEMENT OF AL MEIKLEJOHN, COLORADO STATE SENATOR

Members of the Committee and Staff: My name is Al Meiklejohn. I am a 3 term member of the Senate of the State of Colorado. My profession is a lawyer and certified public accountant. I have participated extensively in proceedings regulating various modes of transportation and I have made scores of studies relating to transportation costs.

Preliminarily, I'd like to take this opportunity to thank you for permitting me to submit written testimony for incorporation into the record of this oversight hearing. The Subcommittee is to be commended for taking the time and effort to consider the views of the citizens who have an interest in transportation.

Of course, in a larger sense every man, woman and child in the Nation has a vital stake in these hearings, due to the essential role of common carrier transportation in our economy. Unfortunately, many people are probably unaware that trucking has been "reregulated" by the Motor Carrier Act of 1980.

Colorado is a state which is extremely dependent upon a good system of motor common carriage. Its principal city, Denver, is approximately 600 miles distant in any direction from the next major commercial center. More importantly, the state has approximately 1100 separate communities scattered across its vast distances. Ninety percent of the state's population and industry are concentrated in a narrow strip lying 25 miles on either side of Interstate 25 and running a distance of about 170 miles. But the remainder of the state is important to its economy, and the residents and business people of the outlying communities are entitled to reasonable service at nondiscrimatory rates.

With this in mind, I'd like to turn to some of the relevant issues which I believe should be considered after five years of "regulation".

TALK OF FEDERAL PREEMPTION WITHOUT CAREFUL ANLYSES OF STATES' RIGHTS IS NOT IN THE PUBLIC INTEREST

During the past few years, there has been an increasing effort to make federal preemption a panacea for alleged problems in the motor carrier system. Most such discussion has been general in nature and little, if any, has concerned itself directly with States' rights in regulating utilities such as trucking. While it is true that some areas of regulation might be better coordinated, or eliminated, such as issuance of permits, size and weight matters, and various tax issues—certain branches of the federal government seem intent on pursuing their will on the basic question of regulation itself.

For example, at a recent meeting of the American Bar Association in Washington, DC, a panel discussed the question of "Antitrust in the Transportation Industry—Has Deregulation Gone Too Far Too Fast?" A representative from the Antitrust Division of the Department of Justice, in responding to a question about DOJ's intentions in view of the Southern Motor Carriers Rate Conference (SMCRC) Case, indicated that DOJ planned to "educate" the states as to when regulation is "appropriate" and when it is not. Such action seems to me to be directly contrary to the findings of the Supreme Court in the SMCRC case itself. The particular issue in that case was collective ratemaking—but it could have been any aspect of regulation by a state involving conduct within its borders. And the decision was crystal clear. When a state has clearly articulated a policy involving a regulatory scheme—and supervises the conduct thereunder—the state action doctrine applies and federal antitrust statutes do not. Apparently unsatisfied with that decision, DOJ now intends to go around the barn to attempt to undo the result. In the Constitution, our founding fathers envisioned several roles for the federal government, but a role as "missionary" was not included.

Colorado has a Sunset Law. Under this Act, regulatory agencies of all kinds are systematically called before the Legislature for review. The General Assembly must act affirmatively or the agency goes out of existence. We started reviewing our State Public Utilities Commission several years ago. That agency regulates surface transportation intrastate in Colorado. I served on the committee which held the hearings, and there were many. Additionally, the University of Colorado, the State Auditor's Office, and the Department of Regulatory Agencies conducted review of the Commission. The Sunset process continued for two years. At the conclusion of the study, the joint committee recommended some small changes and fine tuning to the laws regulating transportation. It then voted unanimously to continue the regulation of motor vehicle transportation within the State of Colorado. That recommendation was adopted by the entire General Assembly and this State's regulatory laws are continued in force.

The other aspect of this matter that warrants attention is the fact that, to my knowledge, no state has rushed to mirror the provisions enacted under the Motor Carrier Act of 1980. Part of the reason, I suspect, is that it is still too early to clearly ascertain the true impact of that Act. On the other hand, some states have either ordered cancellation of the vast discounting occurring in their states, which apparently evolved because of similar conduct on interstate traffic, or have ordered investigations into the practices of discounting to see if unreasonably high rates exist for many because of below-cost pricing for a few major shipper concerns. Thus, to some extent at least, the original regulatory concept of a reasonable rate for users who are similarly situated is once again exerting some push.

The foregoing is not meant to suggest that states, such as Colorado, have no interest in cooperating with the Congress or federal agencies in improving the current transportation system. It is meant to suggest, however, that a general disdain or non-recognition of the interest of the several states in such matters can only make cooperation more difficult.

My concern about Federal preemption is not based upon mere supposition. As a result of the preemption in the Bus Act, many communities in the Yampa Valley of Northwestern Colorado, and even the City of Leadville, have lost all bus service. I do not want to see the same thing happen in terms of freight service.

THE POLICIES OF THE INTERSTATE COMMERCE COMMISSION ARE PROMOTING DISCRIMINATION

This is the last of the annual hearings which were mandated by the Motor Carrier Act of 1980 for the purpose of reviewing the effects of that legislation and its implementation by the Interstate Commerce Commission. It is appropriate to employ this occasion to examine the extent of rate discrimination in motor carrier transportation today, because the principal evil to which the Interstate Commerce Act was addressed was discrimination. The Cullom Report, which accompanied the Interstate Commerce Act of 1887, after reciting a series of eighteen complaints against the railroad system in the United States, summarized:

"It will be observed that the most important, and in fact nearly all, of the foregoing complaints are based upon the practice of discrimination in one form or another. This is the principal cause of complaint against the management and operation of the transportation system of the United States, and gives rise to the questions of greatest difficulty in the regulation of interstate commerce."[1]

Years later, the Supreme Court would observe:

"The principal evil at which the Interstate Commerce Act was aimed was discrimination in its various manifestations. (*State of New York* v. *U.S.*, 331 U.S. 284, 296 (1947))."

It also observed in *United States* v. *Baltimore & Ohio R. Co.*, 333 U.S. 169, 175 (1948), that: "Language of the broadest scope has been used to accomplish" this purpose.

The Motor Carrier Act of 1980 did not tamper with the prohibition against discrimination. In the Motor Carrier Act of 1935, the original Interstate Commerce Act prohibitions against "unjust discrimination" and against undue "preference" and undue "prejudice" were combined in 49 U.S.C., Section 216(d). Prior to its recodification in 1978, Section 216(d) made it unlawful for a motor common carrier of property to "make, give or cause any undue or unreasonable preference or advantage to an particular person, port, gateway, locality, region, district, territory or description of traffic, in any respect whatsoever; or to subject any particular person, port, gateway, locality, region, district, territory or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever." The broad scope of this provision was carried forward in the recodification, where fewer words were used to express the same meaning. 49 U.S.C., 10741(b) provides simply that a motor common carriers ". . . may not subject a person, place, port, or type of traffic to unreasonable discrimination." But, as the foregoing history makes clear, this abbreviated definition embraces the "language of the broadest scope" that was formerly contained in the Act.

Despite the fact that the Motor Carrier Act of 1980 did not remove the prohibiting against discrimination, the Interstate Commerce Commission in its administration of the Act during the past four years has effectively written that prohibition out of the statute. Despite the fact that hundreds of thousands of motor carrier rate filings have been made with the I.C.C. since 1980, there is not a single instance in which the I.C.C. has found any of those rate filings to be discriminatory. We now have em-

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[1] The Economic Regulation of Business and industry, p. 63.

pirical evidence of the consequences of that conscious policy to ignore discrimination.

The I.C.C.'s decision to pursue competition as the ultimate goal of the National Transportation Policy in disregard of all other values and goals written into 49 U.S.C., Section 10101 has led it to the ideological conclusion that competition will adequately prevent discrimination and will act as the ultimate regulator. As I will demonstrate shorty, the Commission has expressly stated that view. It is interesting to note that the same position was taken by the railroads in 1887. Again, the fallacies of that argument were pointed out in the Cullom Report, which accompanied the Interstate Commerce Act. That report stated:

". . . the railroad argument against legislation on the ground that competition, the laws of trade, and an 'enlightened self-interest' afford all needful protection and the most effective regulation, is predicated upon the conditions which prevail at the great commercial centers and in favored localities where competition is most active, and applies more particularly to the larger shippers, who are always able to take care of themselves and at such points can usually depend for protection and fair treatment upon the eagerness of corporations to capture all the business possible. But it should be the aim of the law to protect the weak, and it is at the great number of non-competitive interior points, scattered all over the land, at which even the protection elsewhere afforded by competitive influences is not found, and where the producer and shipper are most completely in the power of the railroads, that additional safeguards are most needed."[2]

What is the attitude of the Interstate Commerce Commission toward its statutory responsibility to prevent discrimination? The answer will be found in the report which the Commission served September 13, 1983, in *Ex Parte No. MC-166, Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980.* In that report, at page 15, the Commission adopted the 1887 arguments of the railroads that competition was an adequate protection against the evils of discrimination when it stated:

"We also agree with the views of our sister agencies that, because the trucking industry is inherently competitive, predation, destructive competition, and discrimination are unlikely to occur, and therefore, establishing general standards for predatory and discriminatory practices is unnecessary and perhaps even counterproductive."

The Commission then went even further to indicate in advance that even if complants of discrimination were presented by an injured party through a request for suspension and investigation, it would not apply that statutory remedy. At page 16 of its report, the Commission asserted:

"As discussed in Discount Rate, we would also reiterate our belief that predation and other unlawful pricing claims discussed here cannot be properly addressed at the suspension level. As the DOJ points out, evidence to assess these unlawful pricing claims is more readily available after the rate becomes effective, since only then do we have the opportunity to observe the behavior of the rate proponent. We agree with the DOJ that in many instances ex post remedies (such as declaring existing rates unlawful under the Interstate Commerce Act or referring allegations of anticompetitive pricing to the DOJ for prosecution under the antitrust laws) are a more effective means of preventing anticompetitive behavior than the suspension of a proposed rate." [3]

Consistent with that declaration, the I.C.C. has not suspended any proposed rate filed with it during the past two years on the grounds of discrimination. Instead, the Commission has gone so far as to encourage the filing of rates which are available specifically and only to named shippers (*Ex Parte No. MC-158, Rates for a Named Shipper or Receiver.*).

Rocky Mountain motor Tariff Bureau (RMB) furnished at my request certain statistics from the Continuous Traffic Study conducted by that agency. That information is helpful in assessing the results of this policy of indifference to discrimination on the part of the I.C.C. The Continuous Traffic Study is a statistically valid random sample of all freight bills governed by the tariffs published by RMB. The study for calendar year 1984 disclosed that on freight bills showing discounts, the average discount on freight bills for traffic in truckload quantities (10,000 pounds or more) was 26 percent and the average discount on less-than-truckload freight bills was 23.5 percent. Taken as a whole, those bills which showed on their face a discount from

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[2] Schwartz, The Economic Regulation of Business and Industry, p. 59.

[3] The Commission was less than candid in failing to acknowledge that the burden of proof is upon the complaining shipper in the complaint process, but it is upon the proponent carrier in the suspension and investigation process.

the tariff rates disclosed an average discount of 23.8 percent considering both TL and LTL.[4] The discounts ranged upward to approximately 60 percent. However, about 42 percent of the bills showed no discount on their face.

During the calendar year 1984, the frame of carriers which RMB is required to use in connection with rate filings with the I.C.C. had a combined operation ratio (operating expense as a percentage of operating revenue, before interest and taxes) of 94.7. In other words, the operating profit margin was only 5.3 percent. When the average profit margin for the industry is only 5.3 percent, it is obvious that average discounts of 23 percent or more (ranging up to 60 percent) indicate a large amount of discounting below costs. It is also obvious that those shippers who are not receiving discounts on their freight bills are paying not only their costs but some of the costs of the favored shippers and the entire burden of any return on the investment of the carriers.

Who are the shippers being forced to bear this burden in order to sustain the discounting to the favored shippers? The evidence and common sense suggests that in general they are the smaller shippers, the occasional shippers, and those located in smaller towns and communities. In other words, as the Cullon report indicated in 1887, competition is an effective regulator only where there is an abundance of competition for the favor of a particular shipper. In the motor carrier industry, joint-line service generally is involved in serving smaller communities. Most of the service between major metropolitan areas is single-line. 63 percent of all single-line shipments were discounted, but only 44 percent of joint-line shipments received discounts.

I have reason to believe that the evidence which is accumulated here represents only the tip of the iceberg. I have no way to assess the extent of discrimination which occurs as a result of the Commission's policy with regard to contract carriage and contract rates. The Motor Carrier Act eliminated what was formerly a general prohibition against dual operations, i.e., both common and contract carriage by the same carrier. As a consequence, under the liberalized entry provisions of the Motor Carrier Act, most common carriers also have applied for contract carrier authority and the I.C.C. has granted contract carrier permits to them. In addition, the Commission has eliminated any ceiling upon the number of shippers that a carrier may serve pursuant to contracts, and it has been granted generic contract carrier authority for contract carriers who serve all shippers and receivers in a named class.[5]

As the final step in this process, the Commission instituted a rulemaking, *Ex Parte No. MC–165, Exemption of Motor Contract Carriers from Tariff Filing Requirements,* 138 M.C.C. 150 (1983). In that proceeding, the Commission gave a blanket exemption to all motor contract carriers from the tariff filing requirements of the Interstate Commerce Act.[6] Taken in combination, these actions by the I.C.C. mean that a common carrier may hold both common and contract carrier authority. It may choose to serve Plant A under its common carrier authority and charge common carrier rates. It may choose to serve Plant B, next door, under its contract carrier authority at secret contract rates. No one need know of the secret deal between the carrier and Plant B, and there is no way of discovering this discriminatory practice, since the contract rates need not be filed.

The Commission's open disdain for all heretofore established law concerning reasonable, non-discriminatory rates and tariff filing requirements, combined with its lack of enforcement in this area, has created a climate in which many carriers apparently have flagrantly disregarded the duty to file tariffs. This practice has come to light as a result of numerous carrier bankruptcies, with the Trustees in bankruptcy filing thousands of balance due claims with shippers who had paid freight bills based upon discount which were never filed in tariff form. In a decision served May 16, 1985, in a case where a shipper complained of the practice, the Commission indicated that it intends to commence an investigation at sometime in the future to determine if this practice is as widespread as shippers claim.[7] In dissent, Commissioners Lamboley and Simmons admitted:

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[4] In addition, there were some discounts which did not appear on the face of the freight bill. These, generally, were the volume discounts which were based upon an audit of the shipper's gross volume at the end of some acounting period. However, these subsequent discounts represented a smaller part of the overall discounting practice.

[5] The ultimate absurdity in this evolution is represented by the permits granted to provide contract carriage to "commercial shippers and receivers of general commodities" as a class. *James M. Nation, MC-171421 (Sub 1),* 1985 Fed. Car. Cases ¶37,155; *River Bend Transport Co., MC-139243 (Sub 12),* served May 7, 1985. (Appeal pending.)

[6] The Commission's authority to do so was affirmed in *Central & Southern Motor Freight Tariff Association* v. *United States,* 757 F.2d 301 (D.C. Cir. 1985).

[7] MC-C-10942, *Atlas Foundry & Machine Co.* v. *IML Freight,* served May 16, 1985.

"In the present case, the complainant generally alleges facts which, if true, evidence significant abuse of the filed tariff rule. Such abuse is directly linked to change in transportation regulation, i.e., the widespread competitive discounting by motor carriers."

The committee should give careful consideration to insuring that adequate data about common carriers is maintained for both the Federal and State purposes.

I think we also should be concerned about the status of the Interstate Commerce Commission as an independent agency, responsible to Congress as it was originally established under the Interstate Commerce Act. I fear that in recent years that lauded independence which led to a high regard for the Interstate Commerce Commission as an agency of government has disappeared.[8]

The erosion of the status of the I.C.C. as an independent agency answerable only to Congress commenced in 1969 when Congress empowered the President to designate which Commissioner shall serve as Chairperson.[9] This authority sharply increased Presidential influence over the Commission and its chief officer, and it undermined the I.C.C.'s traditional autonomy from the Executive Branch.

As I.C.C. officials have been made painfully aware during the current fiscal year with the fiasco over the Commission's budget, the budget process is now crucial. The Office of Management and Budget, and consequently the Executive Branch, holds dominion over the Interstate Commerce Commission by virtue of its authority over budget requests. A prime example of the pernicious influence of OMB authority is furnished by a recent proceeding instituted by the I.C.C. Docket No. 38904, *Elimination of Accounting and Reporting Requirements for Motor Carriers of Property.* As a result of prodding by OMB, the I.C.C. instituted that proceeding on February 20, 1985, to consider the elimination of the uniform System of Accounts for Motor Carriers and to eliminate the current comprehensive annual and quarterly report forms filed by Class I and Class II common and contract carriers of property. In lieu of these reports, the Commission would require only a stripped down, one-page report from Class I carriers, i.e., the very largest carriers. In the general freight segment that would cover only about 150 carriers. This stripped down report does not contain enough data to permit the Commission to fulfill its statutory responsibility with respect to the determination of just and reasonable rate and revenue levels for carriers under the standards of 49 U.S.C. 10701. This proceeding was instituted only after the Office of Management and Budget had ordered the Commission to eliminate all or substantial portions of its reporting program for truckers in a Paperwork Reduction Act directive that amounted to a back door move to deregulate trucking and "sunset" the I.C.C.

The elimination of the Uniform System of Accounts and the quarterly and annual reports presently required of all motor common carriers of significant size would eliminate the ability of the Commission to fulfill its responsibilities to Congress in providing the data base essential for informed legislation. These responsibilities are presently incorporated into the Interstate Commerce Act. 49 U.S.C., Section 10309 requires the Commission to furnish both House of Congress with any requested information or document in its possession, or subject to its authority, concerning common carriers. Section 10311 requires the Commission to submit an Annual Report to Congress, including "information that may be of value in answering questions relating to regulation of transportation." Section 10321 authorizes the Commission to inquire into, obtain information from, and report on, the management of the business of carriers and other persons controlling carriers.

Action by the Commission to eliminate the Uniform System of Accounts also is inconsistent with specific provisions of the Motor Carrier Act of 1980 relating to accounting matters. 49 U.S.C. 10751(a) and 10751(c) contain specific provisions relating to accounting for solicitation and entertainment expenses. The accounting treatment of such expenses was the subject of extended comment at pages 46 and 47 of this Committee's report, which accompanied the Motor Carrier Act of 1980.

One of the clearest explanations of the need for a uniform and consistent system of accounts was provided by the Commission in 1973 in its Decision in *Motor Carrier Accounts—Property,* 343 I.C.C. 122, when it stated at pages 140 and 141:

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[8] See for example, Aitchison, *The Evolution of the Interstate Commerce Act 1887–1937,* 5 Geo. Wash. L. R. 289 (1937), concluding that I.C.C. has promoted equal justice and improvement of general welfare; Harris, *The Commissioners,* 31 Geo. Wash. L. R. 309 (1962), lauding excellent work of I.C.C. Commissioners over a 75 year period; Esch, *The Interstate Commerce Commission and Congress—Its Influence on Legislation,* 5 Geo. Wash. L. R. 462 (1937), describing I.C.C. as a faithful creature of Congress responding to no other entity; Frankfurter, *Of Law and Life and Other Things That Matter,* 236 (1965).

[9] Reorganization Plan No. 1 of 1969, 83 Stat. 859.

"The regulation of accounting ranks high both in importance and value among this Commission's regulatory functions. This is because the books of account provide the only complete and reasonably authentic records of a carrier's arrangements, activities, purchases, sales, salaries, contributions, and other transactions involving the receipt and payment of money or the incurrence of indebtedness. Without this information it would be difficult indeed for us even to attempt to regulate the surface transportation industry in the public interest and consistently with the national transportation policy."

The Commission acknowledged its responsibilities to Congress in this matter in its Decision in *Corporate Disclosure Regulations*, 354 I.C.C. 27, when it stated at page 37:

"With these series of amendments to the act, Congress could hardly have made it more clear that we have not only the authority, but the obligation, to concern ourselves with the activities of the persons controlling, controlled by, and sharing control with carriers."

And at page 34, the Commission observed:

"It is our view that we clearly have the statutory authority to require that the information described above be reported to us for the scrutiny of our staff, Congressional committees, and the public."

The National Transportation Policy imposes upon the Commission an obligation to report to Congress upon the business of transportation in this country and to recommend, as necessary, legislation which may improve the nation's transportation network or remedy problems which are perceived to arise. The Commission could not carry out those statutory functions without a reliable data base concerning the transportation business of the carriers.

Indeed, the provision of a data base adequate for drawing conclusions and making recommendations about both public and private business is an important function of government generally. Congress has specifically allocated that function, with respect to the transportation industries, to the I.C.C. If the I.C.C. did not fulfill that function with respect to transportation, it would be necessary for Congress to fill the gap by delegating such responsibilities to some other agency.

In its Notice of Rulemaking, the ICC explains its elimination of reporting such data as "no longer necessary for regulatory oversight." Yet we are talking about basic industry data. No reference is made to the possible impact of such an action on the several states. Indeed, such action appears to represent nothing more than an attempt by the current group of Commissioners to further deregulate trucking. In any event, I believe such an action would be a great mistake.

I understand that the Regular Common Carrier Conference and others commissioned a thorough review of the present data submissions and accounting requirements under the quarterly and annual reports. I further understand that a substantial reduction in the amount of pages to be filled out (from 69 to 9 or 10) has been recommended—including revised data concerning operations within a state. I support this effort to improve and streamline the data reporting process and would urge this Committee to likewise encourage the ICC to take a more enlightened position on this matter.

STATEMENT OF ARTHUR E. GOGOL

My name is Arthur E. Gogol, Principal, Gogol & Associates, 7723 Greenwich Road, Lodi, Ohio 44254.

My small business consulting firm specializes in the areas of transportation, warehousing, and packaging—in fact, all facets of physical distribution. Our services are primarily to the industrial, domestic, shipping public, with less than ten percent involving export shipments, freight forwarders, and small public motor carriers.

I have lectured at Ohio State and other universities and colleges, and conducted advanced transportation classes for the Cleveland (Ohio) Traffic Club. I have been an Interstate Commerce Commission Practitioner since 1951. I am a Panelist of the American Arbitration Association in regard to rail loss and damage claims, and have qualified as a Certified Member of the American Society of Transportation and Logistics. Prior to going into business for myself in 1960, I had been employed as an in-house consultant by Westinghouse Electric in Pittsburgh; as Chief (civilian), Special Projects Branch, Military Traffic Management Agency, Pittsburgh; Traffic Manager with a specialized steel manufacturer, and worked for four railroads. My military experience in World War II was as an Air Navigator (Lt.jg), U.S. Naval Reserve.

I believe my education and experience qualify me to offer this Statement as to future regulation of our nation's transportation system.

The Motor Carrier Act of 1980 provided an important, key ingredient to and for our motor transportation system. As a small business entrepreneur, I felt for years that restrictions to carrier market entry hindered competition too greatly. It is my belief we have gained all the benefits possible through eased entry and, now, we are reaching the stage of excesses in pricing competition, leading to deferred maintenance, bankruptcies, and greater danger to public safety on our highways.

If XYZ Truckline, which most often owns no motor carrier equipment, goes bankrupt, only the owner-operators who may be owed money (and can't make repairs) are primarily affected. However, excesses in price cutting and loss of truckload revenues have, to a great degree, caused the bankruptcy of large and long-established motor carriers, such as Wilson, Spector-Red Ball, etc. to also enter bankruptcy. This type motor carrier is the backbone of our motor carrier transportation system.

Leaseway Transportation, Inc., with millions of dollars of assets and excellent quality of management, couldn't make the grade as to less-than-truckload (LTL) motor carrier service. If not already, the nation's shippers may soon find that the expansion of Roadway Express and others into new territory may not be able to make up for loss of service by Wilson, Leaseway, etc. Had Leaseway been a member of rate associations and bureaus, especially as to joint rates and routes, its initial service and sales efforts would have been enhanced.

As a Traffic and Transportation Manager and Consultant, over the years I was able to negotiate improved service and reduced rates with railroads, freight forwarders, and motor carriers under regulation. The prime ingredient was a cost reduction or improved productivity change that enabled the carriers to share their savings. Shippers' co-operatives, freight forwarders, and private trucking, as well as motor carrier rate association members, small and large, provided the competition necessary for reasonable rate reductions.

Price cutting, as now conducted, does not come from nor lead to improved productivity. It can and does lead to deferred maintenance and bankruptcy. Question: Does current price cutting benefit General Motors or General Electric more than small firms, such as Phillips Syrup, Cleveland, Ohio? As a management consultant, I can assure you that 35 to 45 percent reductions are not enjoyed by small firms and those located in rural areas.

Sixty percent of small motor carrier clients did not know the costs of shipments they handled, especially as to LTL. Had they been members of motor carrier rate bureaus, they would have had access to average cost data which would have educated them as to costing their operations. One carrier, for example, subsidized his low cost iron and steel freight rates by his revenues from household goods transportation and storage. And this was prior to 1980!

The Interstate Commerce Commission, in the past, provided the stability necessary for a safe and reasonable motor carrier rate system. Without an effective Interstate Commerce Commission, predatory pricing is a strong possiblity. This is especially possible by carriers who are not members of rate bureaus. Few shippers can keep track of changes in surface transportation freight rate tariffs on file at the I.C.C., which, I believe, exceed 100,000! The rate bureaus provide tariffs for many carriers. Elimination of the bureaus would result in additional tens of thousands of rate tariffs.

Today, I have small shipper clients faced with thousands of dollars in demands for additional sums by Trustees of bankrupt motor carriers. Some of these have been and will be resolved equitably in the courts only because there is an I.C.C. to which reference can be made and previous cases cited.

My experience as a management consultant and a specialist in transportation leads me to believe the court calendars will be overloaded and the result horrendous if our present transportation system is further deregulated.

Because of the court suits resulting in awards in the millions of dollars for personal and property damage, along with cargo losses far exceeding the legal requirement of $5,000 per load, we will find additional small carrier bankruptcies. Now, more than ever, we should be most careful not to dismantle our system of transportation and regulation.

In my opinion, the professional talents and expertise in transportation in our regional carrier bureaus and associations could be providing even more services than they now provide to their members and the shipping public. Some of these could be:

Last Resort Insurance;

Loss and Damage Inspection;

Safe-transit type Package Testing and Certification;

Legal Assistance (at a fee) to member motor carriers as to Loss and Damage Court Complaints.

A shipper, especially a small shipper, and especially in a rural area, has little experience or knowledge as to antitrust violations. He does not have the training or time to keep on top of changes in carrier insurance or whether a rate tariff has been changed after the initial publication. With the proliferation of I.C.C.-licensed property brokers, many of which have available secret contract carrier rates, insurance, etc., a shipper needs the protection of an Interstate Commerce Act and an efficient Interstate Commerce Commission. Currently, the I.C.C. provides some measurement of fitness and insurance of motor carrier applicants. The Department of Transportation does not check for illegal carriers, hauling toxic and other dangerous loads, especially in rural areas. An illegal carrier cannot be a member of a regional motor carrier bureau or association (a sticker-decal might be useful here). We need more, not fewer, I.C.C. field investigators.

I implore your Subcommittee not to further deregulate, but to assist in providing the funds for the Interstate Commerce Commission to administer the Interstate Commerce Act as is required by our laws.

[The following information was subsequently received for the record:]

GOGOL & ASSOCIATES,
Lodi, OH, November 1, 1985.

Hon. BOB PACKWOOD,
Chairman, Surface Transportation Subcommittee,
428 Hart Building, Washington, DC.

DEAR SENATOR PACKWOOD: In your letter of October 7th regarding my testimony, you asked the following questions:

1. You note in your testimony that 35–45 percent rate reductions are not enjoyed by small firms and those in rural areas. Do these shippers receive any rate discounts?

2. Are there any specific actions the Interstate Commission should be taken to more effectively enforce the provisions of the Motor Carrier Act of 1980?

In answer to Question No. 1: A small shipper client in Crown Point, Indiana, stated, "Only a few motor carriers provide discounts and none exceed 20 percent."

A manufacturer and local distibutor of wood stoves and prefabricated fireplaces in Lodi and Medina, Ohio, quoted from his inbound bills as follows:

Carrier #1—No discount.
Carrier #2—15 percent discount.
Carrier #3—20 percent and 35 percent discount.

He was most incensed as, on a shipment of 100 stoves (40,000 pounds) from Texas, he was charged $1,100, and on an order of 25 stoves (10,000 pounds), he was charged $780!

Attached hereto is an item indicating an advance notice of a discount publication. This illustrates that a small shipper of less than 49 shipments per month may not receive discounts.

The Interstate Commerce Commission has rate tariffs on file. Your Subcommittee staff could research a statistical sample and provide you many more examples of rural and small shipper transportation rate discounts versus those enjoyed by General Electric, J.C. Penney, etc. See Attachments 3 and 4.

Question 2: The Interstate Commerce Commission, by encouraging secret contract carrier rates (and common carrier rates identified as to shipper only by code), does a disservice to Congress and the small-shipping public. Worse, small shippers cannot retain attrorneys to review a carrier contract to make sure wording (or silence) as to loss and damage (limited liability) will provide for cargo loss recovery. The present insurance requirement for cargo coverage at $5,000 per shipment is totally inadequate.

The Department of Transportation can be assisted by the Interstate Commerce Commission, at your Subcommittee's request, to identify carriers' fitness as to accidents. See Attachments 1 and 2. How? By insisting that Analysis and Summary of Accident Investigations be compiled and published in the future as was done for 1977–79, and then discontinued. See enclosed excerpts indicating no identification of carriers. No identification these were owner-operators and not full-time employees of a truckline. No mention made as to being an illegal, non-licensed, non-insured ICC motor carrier, driving too many hours, overloaded, with unsafe equipment and/or a newly licensed carrier or one on the verge of bankruptcy.

Senator, I sincerely believe you will find the motor carriers who are members of regional motor carrier associations to be the most reliable and provide a system of

transportation that enables smaller, regional motor carriers, such as Bender-Loudon, Ward Trucking, etc., to compete nationwide through joint routing. The thousands of new, small entries into trucking, owning no equipment, lacking management skills, without easy access to safety regulations, will only cause havoc, ruin our transportation system, and contribute to losses and possible bankruptcies of small shippers through lack of adequate cargo insurance.

Respectfully yours,

ARTHUR E. GOGOL.

Attachments.[1]

STATEMENT OF GRANT M. DAVIS

My name is grant M. Davis, and I currently reside at 2217 Juneway Terrace, Fayetteville, Arkansas 72703. I hold the Oren Harris Chair of Transportation and direct the Center for Transportation Research at the University of Arkansas, Fayetteville, Arkansas. My academic responsibilities involve teaching graduate and undergraduate courses in transportation economics and logistics at the University, and directing research projects dealing with various aspects transportation and public policy projects ranging from economic location analysis to carrier cost behavior. I have testified before the U.S. House of Representatives on the Motor Carrier Act of 1980 during oversight hearings and other committees and agencies of both the federal and state governments on matters pertaining to the transportation industry.

To date I have published eleven books and over 200 major refereed journal manuscripts dealing with a variety of topics ranging from logistics management to motor carrier economics. As a serious student of the domestic trucking industry, I feel qualified to share my views with this Subcommittee on what I believe have been the major impacts of the Motor Carrier Act of 1980 on the industry, as well as several issues that have not yet been resolved.

The Motor Carrier Act of 1980 has resulted in a dramatically changed trucking industry from that existing during the 1970's. The term "motor carrier" industry is misleading because the industry at best consists of several "industries" that loosely comprise the trucking industry. The economic characteristics of these "industries" are dissimilar, so in my comments I will restrict my comments to that part of the "industry" most directly permeated with the public interest—the common carrier LTL general freight industry. In this regard, my brief statement focuses upon the following seven related observations on issues that Congress should be aware of that are occurring in the industry: (1) industry structure; (2) the financial environment; (3) industrial relations; (4) pricing; (5) collective ratemaking; (6) economic re-structuring; and (7) federalism.

INDUSTRY STRUCTURE

The for-hire intercity segment of trucking has been balkanized for a number of years, i.e., common, contract, exempt, intercorporate, and private for-hire carriers. This classification system remains in place today, but the majority of the new carriers entering the market after 1980 have entered the truckload special commodity segment, the role of the freight broker has appreciated, and intercorporate transportation is expanding. In the midst of this rapidly changing and unstable environment is the LTL general commodity carrier; a segment of the industry with relatively high (in terms of trucking) entry costs. This segment of trucking—the only one in my opinion that is a public utility type operation—is financially marginal and is currently being restructured along operational lines, i.e., national carriers (but none providing national service); and regional carriers. These carriers, moreover, now possess not only common carrier operating authority, but many simultaneously possess contract permits and function as brokers. In short, the industry structure, while changing, remains divided on a regional and national basis, with new brokers operating in the market.

Before 1980, the regulated LTL segment of trucking approximated monopolistic competition and even oligopoly of duopoly when examined on the basis of route structure. Presently, LTL trucking is difficult to classify on the basis of micro-economic industry structure, but in all likelihood it is close to a weak monopolistic competition industry structure, and even the tangent case may be the norm rather

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[1] The attachments are in the Committee files.

than an occasional exception.[1] Production is rather flat in terms of total intercity freight ton-miles generated, but market share is being changed dramatically. Among LTL carriers, however, the absolute number of carriers has declined because of a variety of factors; the entry provisions of the Motor Carrier Act being one of many factors contributing to the Industry's re-structuring. This Subcommittee should realize that market entry is open in trucking, but the new operators are attracted to the truckload segment of the market. Also, traffic diversions to these specialized operators have resulted in upward pressure on LTL rates.[2]

FINANCIAL ENVIRONMENT

A corollary to the changing industry structure of for-hire LTL general freight trucking is the overall financial environment within which the industry functions. Prior to the MCA of 1980, ROE for 96 carriers included in a national study group declined from 15.7 in 1977 to 11.47 in 1983.[3] But in 1982, ROE for this industry group was −1.21 percent. This decline can be partially explained by the recession of 1981–1983, during which the number of LTL shipments for the 96-carrier group declined by 23 percent.[4] What in effect is happening is simply that revenues per ton and the number of LTL shipments is falling or flat, and truckload traffic is being diverted, leaving the LTL general freight industry in a marginally weak position.[5]

How has the industry responded to the changing financial environment? The answer is partially provided in the following observations:

Bankruptcy

Since 1980, the number of LTL general commodity carriers has declined. In testimony presented before the U.S. House of Representatives, 183 carriers regulated by the ICC were confirmed as being "out-of-business," with 56 in chapter 11 reorganization proceedings.[6] Interestingly, not a single LTL general freight carrier has resumed business from a chapter 11 proceeding. The toll has included large carriers such as IMFS, with thousands of employees, and smaller carriers such as Arkansas Express. Probably even more carriers would have sought chapter 11 protection or chapter 7 liquidation were it not for the withdrawal penalties associated with the ERISA Act. As previously indicated, not a single carrier has successfully reorganized and emerged from a chapter 11 proceeding because business has simply been captured by existing carriers.

Any listing of bankrupt carriers includes large, medium, and small firms. Many have departed the intercity market, some have merged with other carriers, and others, such as Time-DC, have simply ceased operations yet remain a carrier moving no freight. Some carriers such as Ryder-PIE are considering entering ESOP's to become more competitive. More ominous is the marginal position of some major carriers. Seventeen large LTL general freight carriers had operating ratios exceeding 100 in 1984.[7]

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[1] The classic "tangency case" occurs where some weak monopoly power may exist and firms maximize profits by restricting output. But, many buyers and sellers are involved without substantial product differentiation—a decription that may well apply to certain segments of LTL general trucking on some route segments. Retail gasoline stations are likewise examples of this situation.

[2] Consult *"Quarterly Operating Results of the Motor Common Carriers of General Freight"* (Alexandria, VA: Economic Research Committee, Regular Common Carrier Conference, April, 1985), pp. 3 and 6, for revenue ton data and industrial production output. Also, see Grant M. Davis and William Cunningham, "Deregulation—A Green Light for Trucking Efficiency—A Comment," Regulation (November-December, 1982), pp. 4–5.

[3] Statement of James C. Harkins, Executive Director of National Motor Freight Traffic Association, before the Senate Commerce Committee, September, 1984.

[4] Ibid., p. 21.

[5] The U.S. Interstate Commerce Commission reported on the financial performance of the 100 largest carriers, but their study group consisted of 66 carriers of general freight, seven household goods carriers, 21 specialized carriers, and six others. Their group is obviously different from the common carrier of general freight, which is a large sub-group of General Freight Instruction—27 carriers governed by ICC Ex-Parte MC–82.

[6] U.S. Congress, House of Representatives, Hearings, Before the Subcommittee on Surface Transportation of the Committee on Public Works and Transportation, "Oversight—Motor Carrier Act of 1980" (Washington, DC: U.S. Government Printing Office, 1982), pp. 110–111.

[7] These carriers, operating under the National Motor Freight Agreement include: Murphy Motor Freight; Advance Transportation; System 99; Graves Trucking; Holmes Transportation; Garrett Freight Lines; Ryder & PIE Nationwide; McLean Trucking; Duff Trucklines; North Penn Transfer; Campbell Sixty-Six; Hall's Motor Transit; Pilot Freight; Commercial Lovelace; Associate Truck; BN Transport; and Santa Fe Trail.

Traffic diversion

Carrier earnings are also declining because of traffic diversions to TL special commodity carriers. A finite amount of freight exists and historically LTL general freight carriers have relied upon a mixture of both LTL and TL freight to balance movements and maintain reasonable rates. New TL carriers can operate without terminals and break-bulk facilities and pickup and delivery equipment. Their economics are dissimilar from LTL general freight carriers and hence they are engaged only in providing a limited service to shippers of volume quantities. Traffic diversions have reduced revenue and earnings, and when combined with massive price discounting on remaining LTL freight, has produced low levels of earnings or losses for those carriers remaining in the market.

Capacity

Closely related to traffic diversion is the capacity problem, an issue in LTL general freight. Carriers are maintaining power units for longer periods of time, thereby raising some question regarding their dependability. Before 1980–1981, many general freight LTL carriers replaced power units on a three-year cycle; but today many firms have extended this cycle to five years or more. Also, abnormally low earnings have diminished carriers' ablity to acquire new power units.

Earnings

Before the 1980 Motor Carrier Act, industry earnings for LTL general freight carriers comprising the National Study Group Base experienced a 15.2 percent return on equity. By 1982, and this Subcommittee is aware of these problems, ROE had declined to −1.21 percent.[8] While some may argue that the study group's composition of carriers is not truly representative of trucking, this group does fairly represent the LTL general freight industry. Given the trend in earnings, the LTL carriers in all likelihood face a continued period of restructuring and future earnings may well remain inordinately low because of new insurance requirements, traffic diversions, higher maintenance costs, and other factors associated with the Surface Transportation Act of 1982.[9]

One recent proposal advocated by the Interstate Commerce Commission will increase the difficulty of monitoring the industry. In MF-ICC Docket 38904, "Eliminatin of Accounting and Reporting Requirements," the ICC proposes eliminating many facets of annual reports required of certain trucking concerns. While this docket is opposed by many parties, no one is certain how the Commission will ultimately rule. Unfortunately, if the Commission eliminates the reporting requirements, a gap will be created with respect to knowledge of the industry, and any future monitoring of the industry's performance will be difficult.

INDUSTRIAL RELATIONS

One of the important phenomenon of deregulation is the "two-tiered" or multi-tiered wage structures. Although this technique or phenomenon started in air-lines, it has rapidly expanded to other modes. The LTL general freight industry is a "people" intensive industry, and existing companies are "double-breasting" operations to compete with non-union TL carriers. Virtually none of the new carriers in the intercity freight market are organized, and the impact of the Motor Carrier Act of 1980 on people has been truly staggering. Over 100,000 people have lost their jobs in trucking with a concomitant increase in human suffering.[10]

Two-tier wage structures, according to Professor Thayer of the University of Pittsburgh, will produce a wage structure over time based on the lower wage.[11] In a "people intensive" industry such as trucking, my concern focuses upon the potential of costly service interruptions from future industrial relation conflicts associated with two-tier wage structures for people performing the same job. This problem has been avoided in some cases through the use of ESOP's, but the basic objectives in these cases, insofar as trucking is concerned, were for survival purposes to increase

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[8] Supra, note 3.

[9] William L. Smith, "Insurance, Image Top ATA Executive Agenda," Transport Topics (June 24, 1985), pp. 1 and 6; and George G. Hoffer, "Estimating the Impact of Changes in Cost Allocation Methodology and Highway User Fees on the Allocated Cost and Revenue Responsibility of Motor Carriers," Transportation Journal, vol. 23, No. 1 (Fall, 1983), pp. 31-37.

[10] Statement of Norman Weintraub, Before the Subcommittee on Surface Transportation of the Committee on Public Works and Transportation, "Oversight of the Motor Carrier Act of 1980; the Household Goods Transportation Act of 1980; and the Bus Regulatory Reform Act of 1982" (Washington, DC: U.S. Government Printing Office, Oct. 25, 26, and Nov. 16, 1983), p. 157.

[11] Letters to the editor, Chronical of Higher Education (August 1985).

carrier cash flow by lowering labor costs, not necessarily some managerial desire to expand ownership. But, trucking produces a service that cannot be stored, is highly perishable, and in the event of serious industrial relation conflicts, costly and irreparable service interruptions will occur. Congress should carefully evaluate this problem now, not three or four years from now when the problem germinates. Cost control is important, but there are limits beneath which cost cannot fall over time. I would caution public-policy makers not to ignore the "human resources" aspect of trucking in their deliberations.

PRICING

Pricing in the LTL general freight industry is chaotic at best. Pricing in this industry is not only highly competitive, but unrealistic from a long-term perspective. Motor carrier pricing is a difficult topic to evaluate because of the variety of pricing methods currently being applied in this highly competitive industry. But, for the most part carriers are discounting existing rates for large customers which is probably discriminating against small shippers even though rates are supposed to be unduly free from discrimination, preference, and prejudice. To provide this Committee with some perspective regarding the pricing activities in trucking, I will address the following topics: discounting; quality of price information; number of tariffs, and the monopsony problem in trucking as it exists today.

Discounting

Under certain conditions and specific circumstances, price discounts are a legitimate method for increasing sales, using idle capacity, and achieving other desirable firm objectives.[12] Prices in the LTL general freight market are associated with various legalities such as a requirement to publish rates and the putative use of rate standards of fairness, etc. What has occurred in truck pricing practices can best be summarized in one word: "discounts." Rates are routinely reduced by various percentages to certain customers. In fact, some of the more financially powerful shippers dictate the rates they will pay which are usually expressed in the form of discounts. A report published by the ICC reported over 9 different types of discounts used by truckers.[13] Are discounts available to all shippers? No, only larger shippers for the most part. Rate competition was encouraged by Congress when the MCA was passed in 1980, but I do not believe they anticipated the extent of these "innovative prices," a euphemism for discounts. Maintaining a viable LTL general freight capability is a difficult task when the product for sale is being given away on a large scale. Some states are seriously examining rate discounts because they favor large shippers at the expense of small users, and discounted rates diminish the financial efficacy of an industry maintaining capacity for service "on demand." Arkansas prohibited discounts for a brief period, and the Ohio Public Service Commission is currently considering undertaking a rule-making proceeding regarding the possibility of discounting discounts.[14]

A corollary to rate discounting is the monopsony problem. A monopolist only has control on the supply-side of the supply and demand equation, but a monopsonist can affect price through purchases. In the transportation industry, particularly among LTL truckers, large shippers not only can dictate price, but can exacerbate the capacity problem by placing unrealistic demands on equipment. Because of the proliferation of carriers and traffic diversion, the shipping environment is ideal for the monopsonistics firm to dictate price, thereby putting upward pressure on smaller shippers rates and costs of goods sold.[15] New rates and rate pressure can be pub-

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[12] Kent B. Monroe, "Pricing" (New York: McGraw-Hill Book Co., 1979), pp. 10-12, and 272.

[13] Consult "Ex Parte No. MC-166," Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980, (Washington, DC: U.S. Interstate Commerce Commission, Aug. 26, 1983), pp. 5-7.

[14] Case 144, Arkansas Transportation Commission, "Supplemental Notice of Hearings of Rulemaking" (Mar. 27, 1984), and the subsequent reversal, Case No. R-3034-3214, R-144, "In the Matter of Authority for General Commodity Carriers to Publish Discounts on One Day's Notice" (Sept. 19, 1984); Public Utilities Commission of Ohio, "In the Matter of the Investigation of Intrastate Discounts and Rate Reductions by Common Carriers Subject to the Jurisdiction of this Commission," Case No. 85-742-7R-C01, (Aug. 1985).

[15] Grant M. Davis, John E. Dillard, Jr., and William Cunninghan, "Motor Carrier Strategic Planning: Price and the Monopsonistic Shipper," Proceedings—24th Annual Meeting, Transportation Research Forum, vol. XXIV, No. 1 (Oxford, IN: The Richard B. Cross Co., 1983), pp. 201-207.

lished on a one-day's notice and increases require only a seven-day advance notice. Some shippers may ban together to negotiate prices with carriers, yet another example of monopsony power.[16] It is interesting to observe that one of the active shipper groups that wants to eliminate collective ratemaking has now banned together to negotiate rates for their group.

Price information—Tariffs

Before the Motor Carrier Act of 1980, motor carrier rates were published in tariffs which conformed with ICC tariff circular rules, rates were subject to predeterminated standards, and in general price information was dependability. This situation is no longer true. Since 1980, a proliferation of rates and tariffs have appeared in the transportation community, producing an incredible amount of confusion regarding applicable rates. Because most LTL general freight carriers also simultaneously hold contract and broker authority, the possibility for multiple prices for identical shipments exists. The end result of this profusion of rates and tariffs is a decrease in the quality of price information, an act in itself that can be, and in my opinion is, anticompetitive.

As previously indicated, the ICC only recently proposed eliminating certain cost reports from regulated LTL carriers, a practice opposed by the insurance industry and many carriers and some academics. Rate regulation, although absurd because of the ICC's administration, remains in effect, and without cost reports any attempt to measure price relationship with cost of service will be impossible to compute or monitor. According to Paul Roberts, shipper cost associated with rate determination is excessively high, and even when rates are determined, no one is sure if they are correct.[17] Only recently several shippers have been sued by trustees of bankrupt carriers to recover under-charges because of rate questions.[18]

In summary, the pricing activities pursued by LTL general freight carriers can best be described as "discounting" and "discounting-the-discounts." This practice is not rational in all instances and will certainly contribute to insuring a marginally financial trucking industry. But, my major concern is competition or the lack thereof. Inadequate or faulty price information is anticompetitive in that shippers will and are restricting the number of carriers they will use, monospony power can dictate rates, and price discrimination can and is flourishing in such an environment with small shippers of small shipments probably subsidizing larger shippers. Indeed, if cost of goods sold were examined with and without freight, the difference between large and small shippers would reveal the impact of rate discounts on shippers, as well as the discriminatory nature of many of these prices.

COLLECTIVE RATEMAKING

Perhaps no transportation issue or subject considered by Congress has generated as much confusion or plays as important a role in transportation as collective ratemaking. If collective ratemaking was as pernicious as many groups content, I doubt if this institutional pricing process would still be discussed by this Subcommittee. Collective ratemaking is a rational process that in my opinion is not anticompetitive and certainly increases price knowledge in the industry. To content that collectively established rates are the result of a cartel arrangement is ludicrous given the current nature of price competition in the industry and virtual freedom for entry. Former Senator Cannon, a member of the Motor Carrier Ratemaking Study Commission, made this observation in 1982.[19] Regarding the role of collective ratemaking and its relative power, in April 1982, Evans Economics, Inc., observed:

"Without the base provided by collective ratemaking, the industry is unlikely to return to financial health even after the economy recovers. Hence the deleterious effects of lower productivity and higher prices caused by insufficient capital spending could continue indefinitely if collective ratemaking disappeared." [20]

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[16] "AISA Plans to Negotiate Railroad, Truck Rates With Justice Department Okay," Traffic World (Feb. 18, 1985), pp. 24-25.

[17] Statement of Paul Roberts before The Motor Carrier Ratemaking Study Commission (Cambridge, MA. Mar. 18, 1982).

[18] "Former Customers Sue IML Over Bankrupt Firm's Bid to Collect Undercharges," Traffic World (Aug. 5, 1985), p. 81.

[19] Statement of Senator Howard W. Cannon, April 8, 1983, reported in Collective Ratemaking in the Trucking Industry (Washington, DC. Motor Carrier Ratemaking Study Commission, June 1, 1983), p. 64 of Appendix Section.

[20] Evans Economics, Inc., The EEI Trucking Industry Model (Washington, DC. Evans Economics, Inc., Apr. 1982), p. 2.

As a student of collective ratemaking since 1966, I find it interesting that this institutional pricing process is still under attack from government agencies and large shippers of small shipments. Indeed, it is surprising to me that collective ratemaking would still be in existence today if the process did not have a beneficial purpose given the nature of the various assaults on the antitrust immunity questions that are still occurring at this moment. Appendicies A, B, C, and D of this statement will give this Committee some perspective regarding the controversies associated with collectively established rates.

Collective ratemaking has been seriously maligned as a cartel device that maintains artificially high freight rates. Given that no consensus exists regarding rate levels—at best an ambiguous concept—there are several reasons for this observation. First, most LTL general freight carriers publish most of their own tariffs for named and unnamed shippers. Secondly, membership in a rate bureau is not compulsory. Thirdly, most rates published today are independently announced. But, collectively established rates are openly discussed, and revenue standards are used in rate deliberations. In short, this process is not anticompetitive, but pro-competitive in that price information is available in the intercity freight market.

Congress created the Motor Carrier Ratemaking Study Commission to examine the collective ratemaking issue, but to date no action has been taken on the Commission's highly contentious report. In 1983, the ICC considered a petition to eliminate collectively established rates on shipments weighing less than 1,000 pounds. In July of 1984, the Commission closed this docket without action. During the course of Ex Parte 172, testimony was introduced demonstrating that collective ratemaking was, and is, analogous to financial exchanges, and that lack of price information would be and is anticompetitive. For the most part, the Commission's staff report likewise recognizes the beneficial information aspect of collective ratemaking.[21]

Simultaneously with the MCA, the Study Commission, and Ex Parte 172, was the SMCRC Case discussed in Appendix C. This case involved whether or not collectively established rates on interstate traffic are exempt from antitrust laws if no specific immunity has been passed by the states. The Supreme Court in March of 1985 ruled that antitrust immunity existed if a state had jurisdiction or supervision over rates published by carriers subject to state regulatory authority.

Since collective ratemaking exists, why is the DOT still attacking the concept? In a recent HH goods tariff, the DOJ is questioning, incorrectly in my opinion, if certain accessorial services constitute single-line rates.[22] A decision has not been rendered in this case, but this Committee should be aware of the controversy surrounding collective ratemaking, a process that has withstood attacks from various quarters, but remain today as a simple price information system.

FINANCIAL RESTRUCTURING

Economic concentration, when extensive, can be deterimental to public policy. For a number of years several individuals have expressed concern regarding the degree of concentration in trucking; an industry that according to most economists approximates pure competition, most costs are variable, and has no economies of scale, but for some unexplicable reason is highly concentrated in certain segments. In 1958, Professor Adams concluded that LTL general freight was somewhat concentrated, a conclusion supported by Professor Volotta in 1967. My research, using a Gini Index, reveals that the extent of concentration in LTL general freight is increasing.[23]There are many different methods for computing concentration, but

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[21] Memorandum to Vice Chairman Frederic N. Andre from C. C. Barnekov, "Analysis of Evidence in Ex Parte No. MC-172, Withdrawal of Antitrust Immunity" (Aug. 6, 1984), p. 42.

[22] I & S Docket No. 30371 "Collectively Set Accessorial Rates and Charges on Household Goods, HGCB," Respondent's Reply Statement of Fact and Arguments (July 29, 1985).

[23] A Gini Index of concentration is a measure of revenue concentration that is derived from the Lorenz Curve, and is simply the proportion of the total area under the diagonal that is between the diagonal and the Lorenz Curve, and is an indication of concentration. A Gini Index of 0.56 was computed for 1962 for LTL general freight, and increased to 0.63 in 1969. I am in the process of computing Gini Indicies for the period 1969-84. A Gini Index over time does provide some insight into concentration trends for LTL general freight, but does not provide any perspective to route segments of a market because of data problems. See Grant M. Davis, "An Analysis of the Significance of Concentration in the Regulated Intercity Trucking Industry," Journal of the Alabama Academy of Sciences, Vol. 43, No. 3 (July, 1972), pp. 200-202; U.S. Senate, Select Committee on Small Business, "Mergers and Concentration in the Trucking Industry Report No. 1441" (85th Congress, 2d sess. Apr 21, 1958), p. 2; and Alexander Volotta, "The Impact of Federal Entry Controls on Motor Carrier Operations" (University Park, PA: Center for Research of the College of Business Administration, The Pennsylvania State University, 1967), pp. 122-131.

the main point that I want to make is simply that LTL freight has barriers to entry, affect the everyday shippers, people can price how they desire, and monopoly powers are increasing. I hardly think this was the original purpose of the Motor Carrier Act of 1980. Why has economic concentration occurred? The answer is obvious. The number of carriers competing for a finite amount of freight has decreased, revenue yields are low, and traffic diversions are substantial. It is not surprising that the degree of concentration is high. In my opinion, the degree of concentration is the result of competition, the desire for national coverage, bankruptcy, mergers, ad infinitum. But, when compared to other modes of transportation, economic concentration in trucking does not constitute a problem.[24]

FEDERALISM

Federal transportation laws have preempted many state actions in the area of rail and bus entry and rate questions. However, federal preemptions do not extend to for-hire trucking which have caused problems in pricing and entry. For example, Florida, Arizona, and Wisconsin have deregulated for-hire trucking, but this is not the case for most states where detailed economic regulation of for-hire trucking is pervasive. I am certain that this Subcommittee is well aware of the problems and conflicts this situation creates for carriers operating both inter- and intrastate in many areas. In my opinion, federalism will remain a problem in trucking, and I do not foresee states abandoning their regulatory patterns in the area of LTL general freight.[25]

CONCLUSIONS

The primary purpose of my statement was to briefly bring to the Subcommittee's attention the restructuring occurring in trucking, the financial environment, the pricing problems, industrial relations, collective ratemaking, concentration trends, and federalism. In LTL general freight we are observing the demise of many small regional truckers and the degree of financial restructuring has increased dramatically each year since 1980. No one truly knows the quality of price information in LTL trucking because of the proliferation of rates and tariffs, and small shippers are probably being charged unreasonable rates. Traffic diversions to new TL carriers are putting upward pressure on LTL rates.

A prolonged labor dispute in trucking will be costly, and the end result of two-tier wage systems brought about by recession and the MCA will intensify this situation. Collective ratemaking remains under attack even though the U.S. Supreme Court has approved the legality of antitrust immunity for even intrastate truck rates. Lastly, the degree and trend of concentration is increasing, but not unexpected given the evironment permeating intercity freight markets.

In closing, permit me to point out to this Subcommittee the following observations: (1) only the LTL general freight carriers are utility type businesses; (2) collective ratemaking increases not decreases competition; (3) the industry is weak financially; (4) concentration is increasing; (5) future industrial relation disputes are inevitable; and (6) the lack of price information will compound trucking problems with small shippers of small shipments being denied equal access to markets for their product.

Deregulation is a popular phrase that certainly has appeal to businessmen, government officials, and others. But, there should be certain ground rules for orderly markets, and this Subcommittee should bear in mind that the Motor Carrier Act of 1980 was not a deregulation act per se, but instead was a regulatory reform measure. If a single descriptive term could be coined to describe the present trucking environment, it would have to be "confusion." Just think—the industry is deregulated, but it is not; price is flexible, but rates have to be published; ad infinitum. If someone had the opportunity to create perdition for LTL trucking, they would have suggested the current Interstate Commerce Commission's administration of the Act. I find no fault with the Motor Carrier Act of 1980, only the administration—or the lack of administration—of the Act.

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[24] Rail and air carriers are obviously more concentrated than LTL general freight. Also, see note 21.

[25] Consult Kevin H. Horn, "Federal Preemption of State Transportation Economic Regulation: Conflict Versus Coordination," Transportation Journal, vol. 23, No. 2 (Winter, 1983), pp. 28–46; and, N. Gail Frey, et al., "Effects of Regulation of the California Intrastate Trucking Industry," Transportation Journal, vol. 24, No. 3 (Spring, 1983), pp. 4–17.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. You state in your testimony that the less-than-truckload (LTL) segment of the trucking industry is a public utility type operation. In what specific ways is the LTL sector a public utility?

Answer. Regarding your first question that the LTL segment of the trucking industry is a public utility type operation, I direct your attention to my statement on page 2, paragraph 2, where I state:

". . . In the midst of this rapidly changing and unstable environment is the LTL general commodity carrier; a segment of the industry with relatively high (in terms of trucking) entry cost. This segment of trucking—the only one in my opinion that is a public utility type operation—is financially marginal and is currently being restructured along operational lines. . . ."

Of the many industries that loosely form the "trucking industry"—special commodity TL truckers, tank truckers, intercorporate haulers, and others—the LTL general commodity industry has relatively high entry barriers when compared to other segments of domestic trucking. This does not imply that barriers to entry in the LTL general freight market are of the same magnitude as a communications monopoly, an electric utility system, or other normally perceived public utility type enterprises. But, LTL general commodity carriers are common carriers, and common carriers have traditionally been viewed as public utility type operations; and in this regard I direct your attention to a classic public utility textbook authored by Martin G. Glaeser of the University of Wisconsin, "Public Utilities and Capitalism" (New York: Macmillan Co., 1957), specifically pages 8–13 where an industrial classification of public utilities is presented by Professor Glaeser. On page nine he writes:

". . . This may include the provisions of the 'way' as well as the transporting medium. Transport services are rendered by highway, railway, pipeline, waterway and airway. Part of the plant may be furnished by the government, as in the case of highways, airways, waterways, and pipelines. Certain ancillary services may be rendered, such as providing parts, docks, stockyards, terminals elevators, warehouses, hotels, and specialized equipment. There is usually a bobtail of incidental services which cluster about primary transport services. Only those agencies, however, which 'hold themselves out to serve all commerce,' so called common carriers, are true public utilities which must be distinguished from private carriers and contract carriers for hire. . . ."

Forasmuch as an LTL: general freight carrier operating under a certificate of public convenience and necessity from the Interstate Commerce Commission, it holds itself out to serve the general public to the extent of the conferred operating authority. This is a public utility type of operation as opposed to a contract carrier that serves one or a few shippers, or a private carrier, exempt carrier, or some intercorporate hauler.

Also, the capital costs for the LTL trucking industry are substantially different from those found in some of the other industries that loosely comprise trucking. Not only does an LTL operation require terminal facilities, but pickup and delivery trucks, conveyer equipment, etc. LTL freight operations require more ancillary equipment than special commodity TL carriers and other trucking operations. One can endlessly argue the economic characteristics of a classical public utility such as economies of scale, tendencies to ruinous competition, price discrimination, ad infinitum, but to the extent that a general freight carrier operating under a certificate of public convenience and necessity, then logic would suggest that the operation is a public utility.

Also supporting the utility type operations of LTL general freight, Policy Management Associates of Cambridge, Mass., in "The Impact on Small Communities of Motor Regulatory Revision," June, 1978:

". . . Barriers to entry in the long-haul less than truckload market would be very high under deregulation. . . ."

Question. As you note in your statement, there have been a number of trucking company bankrupticies since 1980. How significant a factor was the recession? To what extent did the managements of those companies attempt to adjust to regulatory reform?

Answer. The 1981–83 recession certainly complicates any objective attempt to measure and allocate trucking's financial malaise on the basis of "recession" and "restructuring." Because transportation demand in the aggregate is a derived

demand, any downturn in overall economic activity would imply that a concurrent decline would occur in LTL general freight tonnage. But, the Motor Carrier Act of 1980's administration by the ICC in terms of entry and rates lead to the rapid restructuring of the industry. The simple presence of 20,000 some odd new TL type carriers—no one really knows—injected a "for-hire" capacity into the wholesale freight market that obviously was unaccounted for before 1980. This substantial new increase in capacity, combined with a reduced demand, would imply that a certain number of high cost carriers would depart the intercity freight market. The number of common carriers reporting annually to the ICC (Class I & II carriers) decreased from 366 in 1975 to 274 in 1982. (Statistical Abstract: 1984, Washington, DC; U.S. Government Printing Office, 1984, p. 607.) In short, the industry would have been affected by the downturn in the economic environment, but because of the increase in capacity a certain part of the downturn in general freight LTL industry can be assigned to new entrants diminishing the declining pool of available freight.

Regarding the second part of your question asking to what extent the management of failed carriers attempted to adjust to regulatory reform—rate and entry now being open—is also impossible to accurately quantify. As you well know, why a business of any type fails is dependent upon many factors ranging from the overall financial environment to incompetent management. In my statement I discussed the number of carriers that had been confirmed by the ICC as departing the trucking market. But in response to your specific question, carrier failures are probably due to a combination of many factors ranging from high interest rates, high fixed costs, an inability to scale down operations during the recession because of new capacity and entrants, and other factors. Only one new carrier entered the LTL general freight market since 1980 and has hence departed. This carrier, I might point out, is a highly successful firm in other areas but encountered financial problems in trying to succeed in the highly competitive LTL general freight market. Leo Abruzzese of the Journal of Commerce staff reports on "Leaseway Transfer LTL Assets," by writing:

". . . The company's failure to increase freight volume on traffic lanes between major cities was a key factor in the decision. . . . The asset transfer . . . 'was based on the company's belief that over capacity will not be reduced in the near future'. . . . An LTL carrier which hauls freight for several different shippers in the same truck can only succeed with a large terminal system that can attract substantial freight volume. . . ."

The company's board chairman, according to the Journal of Commerce article explained that the LTL trucking ". . . taught us a great deal about continued price-cutting, over capacity, and our major competitors' ability to protect their accounts." This particular carrier is a successful firm with exceptional management, so to conclude that carrier failures are solely the result of management's inability to adjust to regulatory reform is difficult at best.

With respect to managerial attempts or ability to adjust to regulatory reform, my studies and observations of the industry reveal that many of the major LTL carriers expanded as rapidly as possible in an endeavor to develop nationwide market coverage, and hence proceeded to establish terminals at what appeared to be evey major "crossroad" in the country. Obviously, the success of this nationwide saturation strategy is too early to assess, but it is certainly costly. Other carriers appear to believe the best marketing strategy is to develop strong regional bases. Both nationwide and regional carriers, moreover, use a form of hub-and-spoke type operation similar to that found in the airlines industry since 1980. Both types of operations, I might add, still publish joint-line rates, although the magnitude of interlining has declined dramatically since 1980–82, when these strategies were being implemented.

In any event, I don't believe all of the carrier failures can be attributed to any managerial rigor mortis relative to a "regulatory mid-set." Obviously, some failures have been sought about by incompetent management, but the major factors in my opinion is traffic diversions of freight to new entrants in the TL sector of the intercity market, the downturn in the business cycle, high interest rates, questionable expansion, a reduce amount of LTL tonnage, high cost, certainly increased costs associated with rapid development of terminals, and, the infusion of a large amount of new capacity in the industry.

Question. You state that collective ratemaking is a rational process that is not anticompetitive and increases price knowledge in the industry. Why does the trucking industry need collective ratemaking when other U.S. industries have to set their prices competitively?

Answer. With respect to your third question regarding my statement that collective ratemaking is a rational process that is not anticompetitive and that it increases price knowledge in the industry, permit me to explain why the LTL general

trucking industry needs collective ratemaking as opposed to other industries setting their prices putatively competitively. First, I do not necessarily agree with your statement that other U.S. industries set prices competitively because it implies that trucking prices are not competitively established. Any transport price above the market equilibrium price will not move traffic, but the industry needs collective ratemaking because: (1) A need exists to publish joint rates on traffic; (2) The process promotes competition by allowing small carriers to offer to enter into interchange arrangements, and provide the same range of services as large carriers; (3) The process provides a full spectrum of information of rates and services that shippers and carriers need to make the market function effectively with optimum efficiency; (4) The process provides a forum and information that serves as a check on unreasonable rates, as well as discriminatory and preferential rates and practices, thus benefiting shippers (particularly small shippers lacking resources to manage these matters in bilateral relationships with carriers and other shippers); (5) By facilitating joint service arrangements, the process permits the most productive use of equipment and energy resources and economical terms; and (6) The process provides substantial savings on transaction costs. (U.S. Motor Carriers Ratemaking Study Commission, Collective Ratemaking in the Trucking Industry, Minority Report, Page 7.)

Collective ratemaking has been charged by critics as being a cartel, but as Professor Donald Dewey, professor of economics and Chairman of Economics at Columbia University observed in "Neglected Issues in Collective Ratemaking," Proceedings of the 3rd Annual Symposium, sponsored by Dana Corp. (Stanford University Graduate School of Business, December 9, 1981):

"Nobody—certainly no economic—would doubt that entry controls plus rate bureaus equals higher prices for many, perhaps most, shippers. But, the all important component is entry control. Without rate bureaus, entry controls still bring higher rates. For the rate bureau is only one of many methods by which carriers can make profitable use of an entry barrier.

"The converse is not ture. Without entry control, rate bureaus will either disappear because now there is no monopoly to implement, or, if they survive, it will be for reasons having nothing to do with 'monopoly'. They will survive because they serve to reduce uncertainty for carriers and shippers alike and/or because they make a contribution to cost reduction in the industry. I do see why motor carriers might wish to retain bureaus to retain these benefits even after the battle to retain entry control is lost. But, it is rather like Lee at Appomattox asking that his men be allowed to take their horses back home for spring plowing. . . .

"If the common carrier obligation is to continue, then the case for the rate bureau is strong—indeed, virtually conclusive. A common carrier is constrained by rules and regulations on certain types of conduct that would be normal profit making activities in an unregulated industry. In transportation, traditional prohibitions have been secrecy rebates and abrupt termination of service. . . ."

A second reason that LTL general freight carriers need collective ratemaking involves the question of transaction cost facet of pricing a service. Paul Roberts submitted a statement for the September 9, 1985, oversight hearings, updating parts of his 1981-82 study of increased traffic administration cost since the MCA of 1980. As revealed by Roberts, administrative costs have increased dramatically because of the almost infinite number of tariffs and carriers operating in the intercity market today. What is occurring in the industry today is that no one truly knows exactly what is going on in the area of price. This uncertainty has produced problems for shippers and carriers as well. Collectively published prices at least provide some benchmark of price information and services by LTL general freight carrriers in certain geographical areas of the country. Collective ratemaking, moreover, is still needed because interlining of freight still takes place in this country—not all carriers have true nationwide market coverage. And, if the hob-and-spoke system proves as successful in the trucking industry as it has in the airlines industry, the need for collective ratemaking may well increase.

LTL general freight carriers produce a ton-mile of output that cannot be stored, resold, or restructured when market conditions are favorable. Common carrier service—with its variety of responsibilities, duties and obligations are services which are published in freight tariffs that are putatively free from undue preference, prejudice, and discrimination. These prices are supposed to be reasonable. As C.C. Barnekov observed in his memorandum to Vice Chairman Andre of the ICC:

"(1) Collective ratemaking may lower the cost and improve the quality of service to small communities;

"(2) Rate bureaus may reduce the cost of price-making for small and medium sized carriers;

"(3) The existence of uniform list prices facilitates price comparison and reduces transaction costs for customers;

"(4) Rate bureaus are likely to undergo evolutionary changes which may make them more socially useful; if not government constrained. . . ."

In short, the bureau method, in my opinion, increases price knowledge—a competitive, not anticompetitive, act.

Prices established in other industries are based on a variety of factors—not the least of which includes common carrier duties and obligations. Other balkanized industries are not tied together to provide joint-line services that incorporates liability for damages or losses. Other industries do not provide service on reasonable demand as required by a carrier's certificate of public convenience and necessity. While there certainly are some individuals as a matter of faith or ideology who would contend there is no difference between the corner grocery store and an LTL general freight carrier, my reply is: "there is." Price information increases, not decreases, competition.

Question. You state that small shippers are "probably being charged unreasonable rates." Do you have any specific evidence of this?

Answer. Regarding your fourth question concerning small shipper "probably being charged unreasonable rates," on page 8, the last two lines, I state ". . . for the most part carriers are discounting existing rates for large customers which is probably discriminating against small shippers, even though rates are supposed to be unduly free from discrimination, preference, and prejudice." I can only describe what is happening in the industry which should, and to my way of thinking, does support my observation for several reasons. First, Arkansas and now Ohio, are considering eliminating discounts because they favor large shippers. Arkansas, as I pointed out in my statement, revised its position on this matter for very curious reasons that have never been published, while Ohio regulators have yet to rule on this matter.

The Interstate Commerce Commission in Ex Parte MC 166, as noted in my statement, discussed carrier pricing under the MCA and for the most part this report dealt with discounting. Price discounts under some circumstances are extremely useful for marketing strategy; a factor I pointed out in my reference to Kent B. Monroe's excellent book Pricing. Since Robinson-Patman does not apply to services or trucking, my objections to discounts favoring large shippers is simply that they tend to force smaller shippers to pay a higher price in the short-run period. By way of example, one study submitted to the subcommittee during the oversight hearings in September by Edward S. Paull, Traffic Manager for Precision Steel Warehouse, Inc., reports on page 6 that the base rates on his average shipments increased 70 to 90 percent since 1980, and even with discounts freight rates since 1980 are from 55 to 70 percent higher for average shipments and even more for minimum charges. Dean Hille's statement before the subcommittee also reported on a survey he conducted of selected shippers in Missouri, and revealed a profusion of discounts that even varied by shipper size. I can contrast these reports with statements and reports from large shippers that suggest their freight charges are substantially less since 1980. Intuition certainly suggests that something is happening in this industry. In fact, the pricing situation is such that the June 21, 1985, issue of the Daily Traffic Report, reports that "GAO Plans Investigation of Trucking Discounts," (page 3). "All carriers engaged in discounting," Industry Updates, industry updates, a newsletter published by Wheat First Securities of Richmond, VA, monitors several public companies in LTL general freight, and in their January 17, 1985 report, pp. 3–4, a definitive report of the impact of disounting is discussed and reports, ". . . what could be considered a high intensity price war . . . " is occurring. If this is the case, and it is, why has the charge for LTL small shipments increased unless this "optionless" sector of the market is bearing the brunt of freight increases? Shippers with economic power demand large discounts and receive them. Small shippers who frequently do not even have a traffic department (Hille's Statement) do not know what the rate is and bear the burden of these increases.

Senator Packwood, I have examined freight bills for freight consigned to and from large retailers that receive discounts of up to 48 percent of the published class rate. If a small retailer in competition with such a major retailer does not receive a similar discount for a similar shipment, he or she will soon discover that their cost of goods sold is higher than large competitors. But rates are supposed to be reasonable, with no undue preference, prejudice, or discrimination. In my statement on page 10, I refer to a research project authored by John Dillard, William A. Cunningham and myself on monopsony in trucking. Bill Cunningham and I found in 1983 that overall LTL prices were escalating because of: (1) a declining traffic base; (2) traffic diversions to TL special commodity carriers; and (3) discounting. All of these data clearly

indicates who is bearing the brunt of the current price environment—the small shipper of small shipments such as Precision Steel. These shippers do not possess many alternatives—UPS obviously does not want these types of shipments, etc., and the use of freight associations can lead to increased transit times. This situation may rectify itself when capacity adjustments occur in the industry, but as J. K. Galbraith observed, "countervailing power" evolves over time. We are now seeing this in the form of LTL general freight servicing large accounts on a contract basis. But in the short-run what options do the small shippers of small shipments have? None. And we still have federal laws dealing with unreasonable rates that are being enforced?

STATEMENT OF JAMES P. RAKOWSKI, PROFESSOR OF TRANSPORTATION AND BUSINESS LOGISTICS, MEMPHIS STATE UNIVERSITY, MEMPHIS, TN

My name is James Peter Rakowski and I currently reside at 2934 Cross Village Cove in Germantown, Tennessee. I am presently employed by Memphis State University. My position is Professor of Transportation and Business Logistics in the Department of Marketing at the Fogelman College of Business and Economics at Memphis State. I have been at Memphis State for eight years. Previous to this I spent six years as Assistant Professor of Transportation at the School of Management of the University at Minnesota in Minneapolis.

In terms of education, my bachelor's degree is from Princeton University. I graduated "cum laude" with a major in economics. I also hold a Ph.D. in business administration from Columbia University with a major in transportation and distribution. Additionally, I spent a year as a post-doctoral fellow in transport at the University of British Columbia in Vancouver, Canada.

In essence, my entire career has been spent as an educator and researcher in the field of transportation and distribution. I am the author of one book and several dozen articles in learned journals concerning various aspects of transportation and economics and transportation policy.

What I see in the trucking industry today troubles me greatly. In essence we appear to be sacrificing our national "system" of less-than-truckload motor carrier transportation on the altar of theoretical economic purity. It is my firm opinion that we have carried the emphasis on competition and still more competition past the point where competition is beneficial and productive, to the point where this total reliance on completely unbridled market forces is causing major structural problems and severe financial difficulties in the motor carrier industry.

Now, a certain amount of competition is not only desirable, but of great benefit to the economy and the shipping public. The Motor Carrier Act of 1980 with an emphasis on competition through easier entry and expansion, and greater choice of carriers and services for the shipping public was a move for positive and beneficial competition.

What has happened now, however, is that the focus of competition in the trucking industry is on the price variable. Now, a degree of price flexibility is desirable just like easy entry is desirable; but, that pricing freedom must be accompanied by prudent business practice.

In plain English, firms must set prices that cover their costs. If prices do not cover costs, the end result will eventually be bankruptcy. Of course no "rational" person would ever set prices that do not cover costs, and since economists assume firms to be "rational" no such things as noncompensatory rates or unfair or destructive competition can exist. Yet we have seen an epidemic of bankruptcies in trucking.

Why do we have this irrational behavior and destructive competition? This situation results from a combination of two things. First, the economic theory of pure competition does not match the reality of the marketplace in the less-than-truckload sector (LTL) of the motor carrier industry. It may, more or less match reality in the truckload sector, but even there I am not certain. Secondly, I must point my finger at the Interstate Commerce Commission (ICC) and say that they are not doing their job of policing rates.

There are still laws against discriminatory rates. Noncompensatory rates are still proscribed. However, the ICC seems to take no notice of the jungle warfare that is going on in the trucking industry. Rate review seems to be a thing of the past.

Not only is the Interstate Commerce Commission ignoring specific statutes in regard to rates, but it has allowed a situation to develop in the trucking industry that quite clearly is contrary to the National Transportation Policy. This is a situation about which your subcommittee should be very concerned. There is persuasive

empirical evidence in support of the foregoing statement, which I shall proceed to describe.

During the past few weeks I have been able to accomplish some substantial research on the state of the trucking industry by inputting data and analyzing the LTL protion of the trucking industry. Specifically I have done a comparison between 1979, the year before deregulation, and the year 1984, the latest full year for which figures are available.

An analysis of these data indicates that the LTL industry, the backbone of our highway transportation "system" is in far worse shape than most people realize. We all know that many small firms have been squeezed out and that every so often a major truck line makes the headlines as it slides into bankruptcy. However, the financial illness in the trucking industry is much more widespread. In essence, except for a relative handful of the largest carriers and a few very successful smaller carriers, the industry is virtually a profitless basket case.

My sample for analysis for both the years 1979 and 1984 was the 100 largest general commodity carriers that fall under the so called "Instruction 27" category. These are the ICC regulated general commodity carriers that have at least 75 percent of their revenue in intercity freight. This grouping eliminates firms that are largely local, and specialized carriers such as household goods movers, tank truck operators, etc. and gives us a homogeneous group of general commodity carriers.

My data source was the "Financial and Operating Statistics" for the years 1984 and 1979, published by the American Trucking Associations. These prublications served only as a source of raw data. All calculations, ratios, market shares, and tables for this testimony are my own work. I therefore take responsibility for any errors that might exist. However, everything has been checked several times. I feel that the results I am about to present should cause great concern to your sub-committee.

In essence, my sample includes the major big name truck companies that most people could name off the top of their heads plus a number of their lesser known brothers. These firms are the essential members of the general commodity common carrier system that guarantees dependable, reasonably priced trucking service to shippers of all sizes in all parts of the nation. We should also add that these 100 firms, with few exceptions, are primarily less-than-truckload (LTL) carriers.

Rather than dwell on individual company figures, I have taken these hundred largest carriers and grouped them into blocks of ten for statistical analysis.

Table One presents data on the share of the total of the hundred largest firms for each of the groups of ten carriers for six traffic and financial variables. These Data will be found on Table 1.

TABLE 1.—1984 FULL YEAR DATA. THE 100 LARGEST INSTRUCTION 27 CARRIERS GROUPED IN BLOCKS OF 10, FROM LARGEST TO SMALLEST

[In percent]

Group	OP Rev	LTL Rev	LTL Tns	LTL Shp	Op Inc	Net Inc
Top 10	54.417	58.777	45.141	45.450	70.826	76.647
2d 10	15.308	14.283	18.889	16.843	8.406	6.668
3d 10	7.736	7.221	8.827	8.466	9.546	9.457
4th 10	5.824	4.892	5.843	9.905	5.077	5.627
5th 10	4.592	4.499	6.413	6.026	2.069	−0.605
6th 10	3.579	2.978	3.847	3.637	0.810	0.102
7th 10	2.675	2.230	3.413	3.295	0.320	0.219
8th 10	2.265	1.778	2.645	2.074	0.776	−0.118
9th 10	1.934	1.698	2.573	2.123	1.032	0.369
Last 10	1.669	1.643	2.410	2.181	1.138	1.634

We should point out that there is quite a range of size among the 100 top carriers in the sample. The largest firm had revenues of almost a billion and a half dollars while the number 100 carrier had total operating revenue of just under twenty million dollars. Therefore, it should come as no surprise that the handful of the largest carriers have such large shares of the total pie.

The top ten carriers had 54.4% of operating revenue and 58.8 percent of LTL revenue for the entire 100 firms. The largest firms are quite profitable with the group of ten accounting for almost seventy percent of operating income and over seventy-six percent of net income. This profit performance for the top ten group is even

more amazing when you consider that one firm in the group had an operating ratio of almost 103, and had a net loss of almost twenty million dollars.

Relative profitability begins to drop rapidly after we leave the top ten group. The second ten, which had over fifteen percent of revenue, made only 8.4 percent of operating income and 6.7 percent of net income. The third ten did quite well. With 7.7 percent of revenue, they accounted for approximately nine and a half percent of both operating and net income.

The fourth group almost held its own. With 5.8 percent of revenue, it gathered in 5.6 percent of net income, though quite a bit less of the operating income share.

For the next fifty firms (groups four through nine), the picture is quite bleak. The share of operating income compared to share of revenue is quite low. Net income is worse. The figures for net income are negative or marginal. The only relative bright spot is the final ten, where the figures rebound sharply from the dismal five preceding groups.

Table Two presents analogous figures for the year 1979.

TABLE 2.—1979 FULL YEAR DATA, THE 100 LARGEST INSTRUCTION 27 CARRIERS GROUPED IN BLOCKS OF 10, FROM LARGEST TO SMALLEST

[In percent]

Group	OP Rev	LTL Rev	TL Tns	LT Shp	OP Inc	Net Inc
Top 10	40.992	42.989	31.088	31.185	60.809	72.522
2d 10	15.624	13.845	13.863	13.069	5.067	−0.859
3d 10	11.414	12.226	14.431	13.673	6.444	4.685
4th 10	8.261	8.062	9.441	8.914	3.940	0.808
5th 10	6.241	5.527	7.319	7.261	5.133	5.515
6th 10	5.101	4.843	6.043	5.132	3.589	1.785
7th 10	4.020	4.237	5.915	5.394	6.577	6.542
8th 10	3.153	2.955	4.257	3.602	0.630	0.560
9th 10	2.766	2.839	4.108	8.254	5.585	5.788
Last 10	2.429	2.477	3.535	3.515	2.225	2.655

Overall, note that the shares of revenue are nowhere near as skewed towards the top group as we saw for the 1984 figures. The top ten firms aggregated only forty-one percent of operating revenue compared to over fifty-four percent in 1984. Interestingly, the second group's share of revenue is virtually unchanged between the two years at approximately fifteen percent.

All other groups have a much more equitable relationship between revenue shares and profitability shares. We still have a good deal of variation between groups, but nothing like the extreme situations exhibited by the 1984 data.

In fact in 1979, some of the smaller groups were relatively more profitable than the larger firms. For instance, group six had only four percent of revenue, but six and a half percent of both net income and operating profit. Likewise, group nine had only 2.8% of revenue, but over five and a half percent of both income categories.

Perhaps the most striking statistics appear when we look at the relative percentage changes in shares for the groups for 1984 versus 1979.

This information is presented in Table 3.

TABLE 3.—THE 100 LARGEST INSTRUCTION 27 CARRIERS PERCENTAGE CHANGES, FULL YEARS 1984 VERSUS 1979 GROUPED IN BLOCKS OF 10, FROM LARGEST TO SMALLEST

[In percent]

Group	Op Rev	LTL Rev	LTL Tns	LTL Shp	Op Inc	Net Inc
Top 10	32.751	36.724	45.203	45.741	16.472	5.688
2d 10	−2.023	3.166	36.249	28.875	65.897	NM
3d 10	−32.225	−40.934	−38.832	−38.085	48.141	101.873
4th 10	−29.502	−39.313	−38.112	11.111	28.855	596.846
5th 10	−26.415	−18.607	−12.379	−17.000	−59.691	NM
6th 10	−29.834	−38.513	−36.345	−29.127	−77.436	−94.288
7th 10	−33.441	−47.366	−42.304	−38.908	−95.132	−96.653

TABLE 3.—THE 100 LARGEST INSTRUCTION 27 CARRIERS PERCENTAGE CHANGES, FULL YEARS 1984 VERSUS 1979 GROUPED IN BLOCKS OF 10, FROM LARGEST TO SMALLEST—Continued

[In percent]

Group	Op Rev	LTL Rev	LTL Tns	LTL Shp	Op Inc	Net Inc
8th 10	−28.161	−39.834	−37.870	−42.430	23.129	NM
9th 10	−30.065	−40.170	−37.359	−74.274	−81.523	−93.626
Last 10	−31.279	−33.664	−31.827	−37.962	−48.865	−38.451

First of all, the only across the board group with all positive changes is the top ten. Note that the increase from 41% of revenue in 1979 to 54.4 percent in 1984 amounts to a 32.8 percent gain in relative share of operating revenue. However, even with profits being skewed towards the top ten, the increase in profit share is far less than the figures for revenues, tons, or shipments. Operating income share increased 16.4%, only half of the gain in revenue. Net income penetration grew at barely a third of the rate of operating income. From this, one could surmise that the impressive growth in revenue share came as a result of higher unit costs and increased interest expense.

On the other hand, the second ten with a decline in operating revenue share (but a gain in LTL revenue share) posted an impressive 66% improvement in operating income share. The net income figure is not meaningful since the group went from a small loss in 1979 to a healthy profit in 1984. A meaningful percentage change cannot be calculated when we move from a loss in one period to a profit in the next period.

For the other groups, we see a continual loss in share when we look at operating revenue, LTL revenue, LTL tons, and LTL shipments. Amazingly some groups managed to show profit share gains even though share of traffic and freight revenue were down. However, losses in the share of both profit categories were the rule.

End result, the smaller and medium sized firms in the industry are having extremely tough times as a whole. One indication of this is that thirty-nine firms on the 1979 top 100 list did not make the 1984 top 100.

A few have merged. Ryder and Pacific Intermountain Express were merged into Ryder/PIE Nationwide. Arkansas Best Freight took over East Texas Motor Freight. There were also a few other mergers.

A handful of the firms that dropped off the list are still in existence. They merely lost business and thus did not have enough revenue to qualify for the big 100 in 1984.

The firms that merely lost business were the lucky ones. The vast majority of these 39 firms went bankrupt. That is pretty plain and simple, they are gone forever.

It does not stop there. Two major firms on the 1984 top 100 list recently went bankrupt. Just a few weeks ago, Mushroom Transportation Co. threw in the towel. Revenues for Mushroom in 84 were almost thirty-one million dollars with an operating ratio of 102.78 and a net margin of minus seven and a half percent.

The other major bankruptcy was Mason & Dixon Lines. With 1984 revenues of 66 million dollars Mason & Dixon won the championship for highest operating ratio, an unbelievable 129.06. Add in interest and a few other things and Mason & Dixon Lines ended up with a negative net margin of a staggering 32.4 percent. It is tough to stay in business when you lose 32 cents for every dollar you take in.

Another indication of the plethora of bankruptcies is the changing cut off point for making my top 100 list. In 1979 the 100th firm had total operating revenue of $30,270,000. By 1984 revenue for the 100th position on the list had fallen to just under twenty million dollars, general rate increases notwithstanding.

Quite obviously, the ranks of medium and smaller firms have been seriously depleted. However, even with this massive shakeout, a large portion of the firms in the industry are financially ill or, at best, marginally profitable.

The next exhibit, Table Four on the following page, illustrates this terrible malaise by examining the distribution of operating ratios.

For those unfamiliar with the term, the operating ration is the universal measure of good health or profitability in trucking. It is simply the ration of operating expenses to operating revenues. An operating ratio of 90 would mean that we had an operating profit of ten cents on the dollar. Of course, from this operating profit we

must subtract interest expense, other items, and pay income taxes, before we arrive at the bottom line figure of net income, or net loss.

* * * * * * *

Only 18 firms are confortably in the 90 to 94 operating ratio range.

Finally, thirteen firms are in heaven with operating ratios under 90 percent.

The bottom line is that a disturbing 49% of our 100 firms are over the edge or near the brink with operating ratios of 98 or worse.

Let us take this analysis one step further and look at the distribution of net margin among our 100 firms. This information is presented in Table 5.

TABLE 5.—DISTRIBUTION OF NET MARGIN, 1984, THE 100 LARGEST INSTRUCTION 27 CARRIERS

Net margin	Neg.	0.x	1.x	2.x	3.x	4.x	5.x	6.0+
Top 10	2		1	2	2	1		2
2d 10	2	1	1	3	1	2		
3d 10	3	1		1		1	1	3
4th 10	5			1	1		1	2
5th 10	3	2	1				1	3
6th 10	2	2	3		1		1	1
7th 10	5	1	2			1		1
8th 10	5	1	1	1	2			
9th 10	5	1	1	2				1
Final 10	2	3	1				2	2
Total	34	12	11	10	7	5	6	15

To the best of my knowledge, a frequency distribution such as that shown in Table Five simply has not been made available before to your sub-committee. Bear in mind we still have the problem that "group" or "industry" figures can be very misleading. The "group" net margin for my 100 firms is 2.46 percent. However, if we take the average net margin based on the individual figure for each of the 100 firms, the "average" net margin is a miniscule 1.27 percent. Note that the 1.27 percent is barely half of the "group" net margin of 2.46 percent. These groups figures can be very misleading and lead one to believe that an industry is in much better health than is really the case.

The net margin, which of course is the final measure of financial health, is even more depressing than the operating ratio figures. Looking at Table Five, we see that over a third of the group, a full 34 firms have a negative net margin. The problem, while concentrated in the four bottom blocks of firms, is also prevalent even in the largest groupings.

Another 21 firms have net margin of under 2 percent. That certainly leaves them little breathing space.

Eighteen companies exhibit more favorable net margins of three, four, or five percent.

Only fifteen firms have net margins of six percent or higher.

To put things in perspective, we might mention that the median net margin for the 500 largest industrial firms in the nation as reported by Fortune Magazine is 4.5 percent. To make things completely comparable with the Fortune Magazine figure, the median net margin for the 100 largest instruction 27 carriers is just under one percent. The exact figure is 0.987 percent, far less than a quarter of the median net margin for the Fortune 500 Industrials.

Also note that the median of 0.987 percent for our study group is significantly less than the average net margin of 1.27 percent that we discussed earlier. When the median is significantly lower than the average it is statistical proof that the average figure is being skewed upward by the relatively much more profitable larger firms. Once again, the group and average figures give a distorted picture of the industry, showing a much better finacial performance than is really the case when we analyze the individual firms as in Table Five.

Now that I have presented my dismal figures on the sad state of the major firms in the LTL motor carrier industry, the next item of discussion involves the reasons for these depressing financial problems.

In one word, the root of the problem is "discounting". Now discounting, in and of itself, is not bad. However, a major qualifying phrase must be added. Discounting makes sense only if lower prices are offered in return for some cost justified rea-

sons. In this scenario both shipper and carrier gain. The shipper receives a lower rate and in return the freight is tendered in a way that reduces the carrier's cost of operation. Perhaps the most common cost justification is the mutiple tender shipment, where several different shipments are picked up at the same time, thus greatly lowering the carrier's pickup cost.

Originally, discounts had some logical cost justification. However, that is very often no longer true. Now many carriers are offering across the board discounts off the published rates without any regard to the true cost of handling the traffic in question.

With over capacity in trucking and a sluggish economy, carriers are offering discount after discount simply to generate enough cash flow for hand to mouth operations without any regard for the long term consequences. Certainly, the data analysis that I presented earlier proves that simple day to day survival is indeed a major concern for a much more substantial proportion of carriers than is commonly appreciated.

Compounding the problem is the fact that the ICC apparently is no longer interested in deciding on the reasonableness of rates in relation to the cost of performing the service or reasonableness in relation to anything else for that matter.

The Commission has caught the flavor of total deregulation. The Commission believes, unfortunately, that if modest deregulation is good, complete deregulation must be better! As I have shown, this approach has led to ludicrous pricing and this deep discounting, without regard to cost, has directly led to the near disastrous state of so many firms in the industry.

Let us look at a few more failures and disasters. Before the Motor Carrier Act of 1980 was passed, theoretical economists and the antitrust lawyers predicted that if entry restraints were removed, there would be massive new entry into trucking. Well, what has actually happened? In the LTL general commodity common carrier sector which we have been analyzing in this paper, there has been only one major entrant from outside the industry.

That one entrant into the business was Leaseway Transportation. After less than three years in the general commodity LTL business, they recently called it quits. To quote from Leasway's 1984 annual report, "We entered the LTL market in June 1982, offering shippers a simplified alternative to the historic LTL class rate system. Shippers did not adapt to the density-based, freight-all-kinds pricing Mechanism and, in April 1984, we changed to the conventional class rate system. With this change, we offered deep discounts off published rates to meet competitors' pricing. In a deep discount pricing environment, a large LTL network able to attract and handle high volumes is necessary to compete effectively. Our concept of operating only in selective higher-volume freight lanes did not provide the volume of freight required to be successful. As a result, early in 1985 we withdrew from the LTL market."

Leaseway's statement about a large network being necessary to survive in the LTL business should put to rest one of the theoretical economists' and antitrust department's favorite statements. Namely, they state that there are no barriers to entry in trucking. Obviously, that is not true in the LTL sector of the business.

SUMMARY

It is clear from the evidence that I have presented that about 90 percent of the firms in the LTL general freight industry, including some of the largest firms, are having severe financial difficulty. Firms on the brink of bankruptcy cannot worry about long range planning and marketing studies. Carriers up against the wall need cash for tomorrow (actually the bills are probably long past due), not next week. They must price accordingly to get the traffic, regardless of their costs. This strategy merely prolongs the agony, it can seldom prevent the inevitable.

Regretably, other carriers are forced to match these rates or they themselves face the loss of traffic. The ICC could stop this situation by disallowing clearly noncompensatory rates, but the Commission does not seem to care. The rule seems to be that anything goes in the world of truck rates.

One other culprit should be mentioned, the large shippers. After all, it takes two to tango and large shippers, exercising great monopsony power by demanding lower rates from carriers, are as much the cause of the problem as anybody else. One could argue the proposition that perhaps smaller shippers and smaller communities are subsidizing the large shippers who are receiving the big discounts. Although, it would be difficult to prove this theory, I submit it as a likely possibility.

Speaking of the possibility of small shippers getting left out in the cold with higher rates and lower levels of service, the new law specifically mandates that the

ICC protect the interests of the little guy. The new policy statement for trucking (section (2)(E) to be exact) requires the ICC "to provide and maintain service to small communities and small shippers . . ."

Looking at rates for the small shipper, I would like to relate an interesting experience to this committee. At a recent social function I was talking with a sales representative from a major motor carrier. We got to discussing rates and discounting. He mentioned that his firm would give a fifteen percent across-the-board discount with no strings attached to anyone that asked for it. Incredulously, I asked, "You mean the shipper won't get the price break if they do not specifically ask for it?" "That's right", he answered.

Now, if that strategy where you have to ask for a discount isn't designed to take advantage of the ignorance of many small customers, what is? If that isn't outright personal discrimination, what is? Yet, unbelievably, the Interstate Commerce Commission knowingly condones things like this.

Just look at the potential power of a large shipper. For instance, General Motors had 1984 revenue of 83.9 billion dollars. Assume that GM spends 2 percent of revenue on transportation; that amounts to potential transportation expenditure of about 1.68 billion dollars. That figure happens to be substantially larger than the total revenue of the largest truck company in the country.

This bargaining power of large shippers (economists call it monopsony, it is the buyer side analogy of monopoly) is a problem that Congress should look into. Certainly pressure from giant shippers who can make or break a truck company is a major cause of many of the unreasonably low rates being offered by numerous carriers.

Historically, critics of the transportation system have always talked about the possibility of carriers taking advantage of the shipping public. Now we have an interesting turn of events where the shoe is on the other foot. These powerful shippers, dozens and dozens of whom are multibillion dollar firms, dwarfing the carriers in size, are important forces in the dynamic new world of transportation competition. Much work is needed to evaluate the impact of large shippers and organizations such as NASTRAC on the structure and health of the trucking industry.

In conclusion, let me emphasize the main points I have tried to make in this testimony.

The LTL motor carrier industry that I have statistically analyzed is in far worse shape than is commonly understood. Of the 100 largest carriers, 49 have operating ratios worse than 98 percent. A full 26 firms actually had operating ratios above 100 for the year 1984.

Looking at after tax income the situation is even worse. Over a third of the 100 largest carriers, 34 to be exact, had negative net margins in 1984. Another 23 firms had positive net margins of less than two percent.

This dismal performance results from the deep discounting that is rampant in trucking. The discounts result from carriers fighting for day to day survival who will do almost anything to get traffic to generate any kind of cash flow. The discounting problem is compounded by large shippers able to force lower rates out of the truckers.

None of this could take place; however, if the Interstate Commerce Commission were fulfilling its statutory duty to prevent discriminatory, noncompensentory, and unreasonable low rates. It appears that the ICC is, by administrative inaction, actually bringing total deregulation to the area of truck rates.

While the Motor Carrier Act of 1980 calls for increased competition; it most assuredly does not call for; and in fact, still prohibits unfair and destructive competition. The law still specifically calls for "sound economic conditions in transportation, including sound economic conditions among carriers."

The current situation in which so may carriers are on the edge of bankruptcy because of irrational and unreasonable pricing practices in the industry is clearly contrary to the intent of Congress and the Declaration of National Transportation Policy. The Senate must do its part in requiring the Interstate Commerce Commission to fulfill its statutory duties to ensure the health and viability of the transportation system.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. In your testimony, you note the role played by large shippers in the financial difficulties now being experienced by the trucking industry. Specifically, how are large shippers hurting the trucking industry?

Answer. In essence, the problem is one of greatly unequal market power between shippers and truck companies. The technical term for a situation like this is "monopsony". It is in very simplistic terms, something like a buyer side analogy to monopoly. In other words, the buyer rather than the seller has the power to set the price for the product. In the present situation, the large shippers and not the carriers themselves are effectively dictating the level of truck rates in many instances.

With enormous amounts of traffic available, these large shippers simply play one carrier off against another until unrealistically low (and unprofitable) rates are offered in order to get the traffic. Conversely, a shipper could simply name a price and, in plain English, tell the carriers to take it or leave it if they do not file a rate at that level.

Now, you might as, why would any truck company accept traffic at money losing rates? The answer is that so many companies are in financial difficulty that they will accept traffic at extremely low rates simple to stay in business a while longer.

But, things get even worse. Other truck companies, who know better, are forced to match the rates of these "irrational" prices. Otherwise, they face the potential loss of great amounts of traffic.

Since almost everyone matches the low rates, no carriers win. It is a zero sum game. Traffic switches back and forth a bit, but no one gains in the long run. The longer run consequences for the carriers have been disappearing profits and continued (perhaps even increasing) bankruptcies in the industry.

Now, the shippers do gain in the form of lower rates. However, manufacturers have not passed these cost savings along to consumers in the form of lower prices. These has been no gain to the average consumer from trucking deregulation.

Things have not stood still since the oversight hearings on September 9th. Three of our largest carriers have announced employee stock purchase plans in return for wage reductions. These firms are Ryder/PIE Nationwide, McLean, and Smith's.

These events are simply a last chance attempt by firms who are on the brink of disaster to save themselves. It is highly probable that these firms will be bankrupt in the not too distant future, in spite of these desperate measures.

There have been no benefits from trucking deregulation for the general public. The gains have been totally illusory. The financial gains from rate reductions have been absorbed by the manufactuers.

On the other hand, the trucking industry is in shambles and things continue to worsen as noted above. Job losses and bankruptices will continue. It is not just a question of individual companies, our trucking system as a whole is in severe trouble. That bodes ill for the economy in general.

There have been no gains from trucking deregulation for the general public. The financial disaster we currently have in trucking is a high price to pay for what essentially has been an economic experiment in total deregulation as far as rates go. The situation is especially disturbing because there have been no offsetting public benefits.

Question. You state in your testimony that the law still calls for "sound economic conditions in transportation, including sound economic conditions among carriers." What specific actions would you recommend to improve the financial health of the trucking industry?

Answer. Specifically, the action that is needed is for the Interstate Commerce Commission to enforce existing statutes concerning "non-compensatory", "predatory", and "unreasonably low" rates.

Now do not get me wrong, I am in favor of the concept of deregulation. Market forces should be given more sway. Easy entry is good, and price competition is good. However, competition does not mean a total absence of rules or standards.

What we seem to have in trucking now is a total anything goes type of attitude at the ICC. I speak specifically of rate review, it appears to be nonexistent at the ICC. This situation is contrary to the intent of Congress and in direct contradiction of both existing law and the National Transportation policy.

The ICC has done a good deal of cost analysis over the years and they should be quite capable of determining whether or not any give truck rate is compensatory. If they do not have the necessary costing information, a number of major motor carrier rate bureaus have done sophisticated costing studies. I am sure the bureaus would be more than happy to work with the Commission in any endeavor that would bring reason and rationality to the rate structure of the trucking industry.

If we are to have a healthy and viable trucking industry, we must have rates that are both reasonable from the shipper's point of view as well as being compensatory from the carrier's point of view. Allowing any rate that any carrier wants to charge, whether that rate is rational or not, in the name of competition or deregulation is a foolhardy course of action.

This lack of review is not only foolhardly, but it is illegal. The Commission must be forced to do its appointed duty in terms of rate review. The members of the Surface Transportation Subcommittee must take action to guarantee that the terrible financial situation in trucking does not continue to worsen.

Competition is good and competition in trucking should still be encouraged. However, it must be fair competition where all rates are compensatory and can yield a fair return to the carrier. Whether a carrier prices it services too low because of a lack of cost knowledge or because the low rates were forced on it by a powerful large shipper is irrelevant. The end result is that we have a noncompensatory rate, and noncompensatory rates are illegal.

Make the Interstate Commerce Commission do its job. These noncompensatory rates must be eliminated. It is the only way to prevent further financial deterioration of the trucking industry.

STATEMENT OF JOHN J. MATHEWS, PRESIDENT OF OK DELIVERY SYSTEM, INC.

I am John J. Mathews, President of OK Delivery System, Inc., an ICC-regulated motor carrier based in Portland, Oregon, representing my firm and Oregon Trucking Associations, Inc., whose several hundred members comprise the overwhelming majority of for-hire motor carriers in the state of Oregon. I am a Director of Regional & Distribution Carriers Conference of American Trucking Associations, and a past president and director of Oregon Draymen & Warehousemen's Assocation. I have been involved in the trucking industry for approximately forty years.

My testimony is offered in the hope that the next Congressional action respecting trucking regulation can rise above the now-conventionalized tug-of-war between the advocates and opponents of economic regulation.

Both the progress and the destruction wrought by the Motor Carrier Act of 1980 are largely beyond reversal. But today's hearing can salvage and extend the progress without exacerbating the destruction.

What has already eventuated is almost total freedom for shipper and motor carrier to negotiate mutually acceptable rates, and almost total freedom of entry into and exit from the business of providing for hire trucking. These objectives seem to genuinely reflect the Congressional intent. But certain concomitant developments are highly suspect:

It's hard to believe that Congress intended that rate levels stratify in accordance with shipper size: the bigger the shipper the lower the rate, and the smaller the shipper the higher the rate. And yet that is exactly what is happening across the country.

It's hard to believe that Congress intended that truck traffic increasingly be concentrated among an oligopoly of trucking giants, who can turn America into a cluster of geographic and commodity-type cartels. And yet that is exactly what is happening.

It's hard to believe that Congress intended that the thousands of owner-managed truck businesses who, in the aggregate, employ more than half of the Americans working in this industry, be disadvantaged in favor of fly-by-nights whose safety record is a national disgrace. And yet that is exactly what is happening.

Today's hearing cannot be expected to right all the major wrongs that have surfaced since passage of MCA-80, but this can at least be occasion to consider adoption of measures that re-direct public policy along the intended lines and away from those that must have been unintended. This, after all, is the function of legislative oversight.

The last defect outlined above—proliferation of irresponsible operator—can be cured by non-economic means. It can be corrected and kept under control largely by enforcement of laws and regulations already on the books. Most specificallywhat is needed is simple enforcement of hours-of-service rules.

The other two defects—concentration of traffic among the giant-carrier oligopoly, and stratification of rate levels in accordance with shipper size—should be addressable by enforcement of existing antitrust legislation. But here we're confronted by a defiant bureauracy: an alliance of the Interstate Commerce Commission, the Federal Trade Commission, and the Department of Justice, all of whose missionaries are roaming the land to preach (at taxpayer expense) that there "simply can't be any

such thing as oligopoly—let alone monopoly—in the trucking industry." The facts be damned. This is gospel. Or, more accurately, dogma.

Unfortunately, it's simply untrue.

As long as three years ago, the Silberman studies identified the tide of concentration of traffic. And today, even a lay examination of traffic data that have been amassed since Dr. Silberman's study confirm that the concentration tide has taken on tsunami proportions. Viewed across almost any band-width of size, the biggest have grown bigger still, and the less-big have lost market share or profitability or both.

Hand-in-hand with this development has been the less-recognized phenomenon of rate stratification: The Fortune 500 manufacturers can coerce lower rates from the carriers than can the vast remainder of American business and industry. This is easy to confirm.[1] And, in fact, this has been the long-accepted practice in those segments of commerce that were already exempt from economic regulation prior to MCA-80.

But it is not sound public policy. And I doubt that it reflects Congressional intent.

If these oversight hearings are to be real attempts at Congressional supervision of laws it has passed, here is where a response is indicated. Here is where the much-sought "freer market" can be encouraged.

Correcting the abuses of traffic concentration and rate stratification requires only the upholding of the historical principle that "rates must not be predatory or preferential."

The ICC, FTC, and the DOJ have shown a determination to repudiate this principle. Congress thus faces a choice of means for mandating it.

Surprisingly, perhaps, many motor carriers would join my firm in supporting the early sunsetting of the ICC if responsibility for enforcing the principle of prohibiting predatory and preferential rate practices could be vested in an agency that would be responsive to future Congressional oversight.

The Department of Transportation is being supported as the arena in which predation and preference complaints could be heard. I tend to concur. The DOT would appear to be the natural home for this responsibility in a government where the DOJ, the FTC, and the ICC have all enunciated a policy of nonfeasance.

Whatever the agency, however, it's clear that the forum must be administrative rather than judicial. Remedy in court has proven futile. The cost is beyond the means of most injured parties, and the response-time is measured in years. Moreover, to date exactly one isolated decision has come down in favor of a trucking plaintiff in an anti-trust action.

In conclusion, if this hearing is to be more than perfunctory, steps must be taken to correct the abuses that—over the long term—will trigger a reversal of the free-market environment sought by MCA-80: proliferation of unsafe drivers and vehicles, and a return to 19th-century-style dominance by shipper-carrier rate-fixing agreements.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. You express concern about predatory pricing in the trucking industry. How could enforcement of the laws relating to predatory and preferential rate practices be more effectively conducted?

Answers. The present avenue for relief of predatory and preferential rate practices through the court system is so time consuming, so expensive and so burdened with unrealistic standards of proof (Areeda Turner, for example) that there has been only one isolated case of relief granted to any trucker since enactment of the Motor Carrier Act of 1980. What's urgently needed is an administrative forum—perhaps within DOT—to resolve questions of predation.

Question. In your testimony, you note concern about the proliferation of unsafe drivers and vehicles. What specific steps need to be taken to improve motor carrier safety?

Answers. More rigorous driver licensing standards would help improve motor carrier safety, but the primary need is for more rigorous enforcement of existing statutes and administrative rules. Particular attention is needed to hours-of-service and use of controlled substances. Operating authorities, like drivers' licenses, should be made revocable on the basis of serious departures from reasonable safety standards.

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[1]Published rates have continued to rise while unpublished rates have very selectively fallen.

STATEMENT OF VICTOR R. WEISSER, DIRECTOR, TRANSPORTATION DIVISION, CALIFORNIA PUBLIC UTILITIES COMMISSION

On behalf of the California Public Utilities Commission, and as Director of its Transportation Division, I appreciate this opportunity to present California perspectives and positions on certain major issues regarding the trucking industry. My remarks represent those of the Commission staff and not necessarily the position of the Commission itself. I understand that Senator Packwood intends to conduct these hearings with a "wide-open" agenda of topics involving the experience of the trucking industry over the last five years. With this understanding, I will focus my remarks on three topics relevant to the jurisdiction of the California Public Utilities Commission (CPUC):

Liberalization of interstate economic regulation and its impact on California.

The role of collective ratemaking.

Federal preemption of intrastate economic regulation.

ROLE OF THE CPUC

Before addressing these areas, I would like, for the record, to briefly describe the functions of the CPUC, and how California's approach to intrastate economic regulation has been evolving over the last several years. I believe this information will help members of this subcommittee appreciate the concerns of California (and perhaps other state) regulators.

The CPUC is responsible for economic regulation (control or oversight of pricing, service and entry) of intrastate for-hire trucking companies. It is also responsible for administering financial responsibility requirements (insurance, bonding, etc.) of both intrastate and interstate carriers. Financial responsibility of interstate carriers is regulated under Public Law 89-170. The CPUC does not have jurisdiction concerning vehicle registration, fuel taxes, third structure taxes, vehicle inspections or oversize/overweight permits.

Historically, economic regulation of motor carriers of property in California has focused more on pricing and less on entry than in other jurisdictions. Since 1935, we have had a dual system of "public utility" carriers, which require certificates of public convenience and necessity, and "permitted" carriers, for which entry is unrestricted. In 1980 nearly ten thousand permitted carriers were "grandfathered in" as public utility common carriers. Under our liberal exit procedures, many of these have chosen not to exercise their common carrier rights and have chosen instead to operate as permitted carriers. Nevertheless, there remain nearly 5,000 common carriers and over 17,000 contract carriers. Additionally, there are several thousand specialized permitted carriers. In all, the CPUC has issued over 42,000 operating authorities to more than 23,400 carrier entities.

California relied heavily on minimum rate orders to regulate prices of common carriers and permitted carriers until 1980. Since that time the CPUC has moved to a policy of allowing more market-oriented pricing. In some cases, the Commission has exercised its statutory discretion to totally deregulate prices of permitted specialized carriers such as tank truck operators and agricultural produce haulers. In other cases, including the large general commodities segment of the industry, it has opted for carrier-negotiated prices subject to oversight. In the cases of dump truck transportation and used household goods moving, it has decided to explore alternative market/cost-oriented approaches to minimum pricing prior to making a final policy decision.

As can be seen, an important feature of the CPUC's approach to policy on price control has been its recognition of the diverse nature of the multiple segments on the California trucking industry. This diversity necessitates flexible application of a wide variety of regulatory tools, depending upon the specific pertinent circumstances involved.

LIBERALIZATION OF INTERSTATE ECONOMIC REGULATION AND ITS IMPACT ON CALIFORNIA

Eactment of the Motor Carrier Act of 1980 and policy changes initiated by the Interstate Commerce Commission before and after 1980 have combined to dramatically reduce federal government involvement in economic regulation of interstate trucking. The acid test of whether this reduced involvement has served California's interests is to determine whether all members of the shipping public continue to have reasonable demands for service met at reasonable prices and to determine whether any members of the public are unduly or inequitably harmed in the process of change. I have not seen any data that convincingly answers the first part of the question one way or the other. We do, however, view the lack of complaints

from shippers and the general public as one positive indicator that serious disruptions are not occurring.

As to the second part of the question, our experience shows it to be more of a "mixed bag", although here, too, we don't have the quality and quantity of data we would like. On the one hand, more open entry into interstate markets has undoubtedly helped some of our intrastate carriers round out their intrastate operations and allowed them to operate more efficiently. And except for the complaints I've received about Mexican carriers coming into California without California carriers being allowed to effectively do business in Mexico, I've heard no increase in carrier complaints concerning interstate competition. On the other hand, I have a deep concern about the impact that intrastate economic deregulation may be having on highway safety in California.

I am concerned that the premium on higher productivity in a deregulated environment may be translated into an irresistible pressure on carriers to compromise their safety standards. Our research has failed to disclose any studies any studies that clearly prove or disprove a causal link between deregulation and safety degradation. Nor have I seen a definitive analysis concluding that such a problem could be remedied by enhanced enforcement efforts by agencies such as the California Highway Patrol.[1]

The important point is that is this juncture we cannot rule out the possibility that economic deregulation may cause an unacceptable degradation of highway safety performance. Government resources are limited and the ability of agencies such as the California Highway Patrol and the National Highway Traffic Safety Administration to compensate for possible safety degradation is therefore limited.[2] I would urge this subcommittee, as I have urged my own Commission, that as we move toward increased reliance on market forces to move cautiously in this area; I urge you to consider delaying an irreversible total dismantling of the framework of regulation until and unless the possibility of a causal linkage is eliminated.

The Role of Collective Ratemaking

My staff recently completed a comprehensive economic analysis of collective ratemaking in California to assist the Commission in deciding whether to continue allowing intrastate rate bureaus to have immunity from the state antitrust law. We found that collective ratemaking, properly supervised, can be a useful adjunct to certain types of economic regulatory programs. We concluded that collective ratemaking should continue to be allowed in those segments of the trucking industry where a program of regulated common carriage combined with shipper/carrier negotiated ratemaking is maintained. We also concluded that collective ratemaking would be inappropriate where the goal of regulatory policy is one of reliance on market forces.

It should be noted that our analysis focused on conditions under which collective ratemaking takes place conditions in California: liberal entry control; many carriers effectively competing; supervision of collective ratemaking by the Commission; effective right of carriers to establish and publish rates independently; effective right of bureaus members to exercise independent action; and existence of several bureaus that in essence compete with each other.

I believe our findings and conclusions can be extended to the arena of interstate commerce. Collective ratemaking, properly supervised, can enhance competition in certain regulated environments.

We often see references to the urgings of deregulators advocating "complete deregualtion, including withdrawal of antitrust immunity for collective ratemaking." There is a basic fallacy in this type of argument, because antitrust laws are themselves a form of economic regulation. Often what is in fact being advocated is the substitution of one form of regulation for another. It is usually not a case of advocating deregulation versus regulation. The real question is what is the best form (and forum) of regulation.

Along this line, I recently noted with interest the statement of the Department of Justice in a hearing on H.R. 1140, the "Railroad Antimonopoly Act of 1985". This bill seeks to place greater reliance on the Sherman Act and less on the Interstate Commerce Act in protecting captive rail shippers. The Department of Justice representative, explaining his agency's opposition, stated that "the bill would essentially

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[1] We have determined that the truck-at-fault fatal an injury accident rate per million miles has risen in California since 1982. A large percentage of truck-at-fault accidents in California is caused by interstate operators.

[2] It has been reported that the NHTSA employs 130 inspectors to monitor 5 million trucks. the CHP has expressed its concern over the role deregulation plays in safety.

make the courts work in a regulatory capacity when there are already existing solutions." Acknowledging there may be instances where captive shipper problems exist, he went on to say "there are regulatory agencies like the ICC to handle specific instances of shipper abuse."

Federal Preemption of Intrastate Economic Regulation

This issue is of great concern to California. I want to emphasize as a preliminary matter that California has a vital stake in having an efficient, viable system of interstate truck transportation available to its citizens. Any state regulations or taxes—whether California's or any other state's—that unduly or unnecessarily interfere with access to interstate transportation are of serious concern to us. To the extent that federal preemption of state action is clearly required to maintain the reasonable flow of interstate commerce, we are supportive of it as a general concept. Our real concern is that the Congress may be asked to use an overly broad brush to address the very real but limited range of industry problems in dealing with the individual states.

The problems of fuel taxes, vehicle registration, third structure taxes and access of interstate trucks to local communities are not problems of intrastate economic regulation. Neither are the solutions the same. The problems interstate carriers may encounter operating intrastate in some eastern or southern states are not California's problems. Eastern or southern solutions to eastern or southern problems are unlikely to solve unidentified and even nonexistent California "problems". They are just as likely to make things worse. Similarly, measures appropriate in California may be very disruptive elsewhere. Our experience in the air, rail and bus industries causes us to doubt the efficacy of the preemption "solution" for intrastate economic regulation of the trucking industry.

Several years ago, the CPUC embarked on a policy direction generally characterized as a liberalized control of pricing regulation. As I discussed earlier it chose to do so on a case-by-case basis for different trucking submarkets. This process has not been without problems, but I am convinced that they pale in comparison to the disruption that would result from a broad brushed preemptive approach. I can assure you that California regulation is responsive to the need for changes. We have a substantially open entry policy. We were one of the first states to adopt a policy of Compensated-Intercorporate Hauling (CIH). Rate discounting is allowed and practiced in California. We will be addressing the single-source leasing issue and viable alternatives head-on. We are actively monitoring the industry and its diverse submarkets and are continuously fine-tuning our programs.

Public Law 89–170 is an outstanding example of state-federal cooperation which should continue. By registering interstate motor carriers under this legislation, the states enforce federal licensing requirements and can exclude operators from their highways who do not possess adquate insurance protection for the public. This is a "Win-Win" program for everyone and, most importantly, the public benefits. California has registered motor carriers of property under Public Law 89–170 for many years and in 1985 extended its program to include passenger operators.

Although we desire this program to continue, we are aware of the concerns of those who suggest that the lack of uniformity in the administration of the program by the states creates inefficiencies and imposes a serious burden on interstate commerce. Their criticism which include the threat of possible repeal or federal preemption cannot be ignored.

We are acutely aware of the need to simplify and continue the program in order to retain its public benefits, and California is one of the principal advocates who support shifting the registration process from the states to a centralized system under the administrative control of NARUC. This proposal is a viable option to ineffective federal preemption or the repeal of Public Law 89–170. It would eliminate many of the complexities and frustrations associated with multi-state registration and could potentially reduce overall program costs. To clearly and conclusively demonstrate that the states can cooperatively devise and operate a centralized registration program, California has strongly urged that the NARUC plan be adopted and implemented at the earliest possible date.

Frankly, with the sole exeception of the single source leasing issue which has recently arisen in California, we have received no information that our programs may burden interstate commerce. The intrastate industry subject to this Commission's jurisdiction provides nearly 100% of the states for-hire transportation needs, earning $4 billion annually in gross revenues. To approach this large multi-faceted industry with the broad brush of preemption because of unrelated problems in a few jurisdictions smacks of the classic situation of solutions in search of problems. I urge this panel to wield the rather dull axe of federal preemption with extreme caution.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. You express concern in your testimony about motor carrier safety. Is there any specific action Congress should take to improve motor carrier safety?

Answer. I want to emphasize that the California Public Utilities Commission is not the California state agency with primary responsibility for motor carrier safety. The California Highway Patrol is statutorily charged with prime responsibility for motor carrier safety, and other agencies, such as the Department of Transportation, have related roles. I cannot speak for these agencies, but I am certain that they too could suggest congressional actions to improve safety.

There are many actions that Congress can and should take to improve motor carrier safety performance. From the specific standpoint of economic regulation, there are a number of federal actions that I would urge:

1. Enhance existing federal programs to collect, analyze, report and share motor carrier safety related data with the states and other interested parties. This should be done with a view to providing definitive answers to questions such as the following:

(a) Is there a difference in the safety performance of for-hire carriers in regulated and unregulated states?

(b) Is there a difference in the safety performance of profitable vs. marginal carriers, large vs. small carriers, fleet operators vs. owner-operators, new carriers vs. established carriers, proprietary vs. for-hire carriers, etc?

(c) Has the safety performance of regulated interstate carriers changed since 1980?

(d) What is the social cost of trucking accidents and mishaps, not only for deaths, injuries and property damage, but also cargo damage, highway congestion caused by stalled vehicles, etc?

(e) Even if it is found that economic regulation promotes safety, are there alternatives to economic regulation available that are more cost effective, such as increasing staffing levels in the Bureau of Motor Carrier Safety or increasing expenditures for highway construction and maintenance?

2. Promote exchange of safety data and other cooperative efforts between state and federal agencies.

3. Delay final and irrevocable decisions to dismantle the structure of federal economic regulation until the role of such regulation in safety is more thoroughly understood. By all accounts, a substantial degree of economic deregulation has already been accomplished at the federal level since 1980. Most of the expected benefits of deregulation are already being realized. Further deregulation at this time can yield only marginal benefits. Should a positive role for regulation be demonstrated, important policy tools that could enhance safety would have been discarded if full deregulation is implemented.

It is my belief that successful movement toward increased reliance on market forces is being threatened by perceptions of deteriorating safety. Some of the nation's most respected experts in the field of trucking safety have made public statements on the role of economic deregulation in the decline in safety in recent years. While I have some concerns that their beliefs may be founded on anecdotal evidence instead of hard empirical data, I do not believe we can afford to ignore their views. The fact is that no one is in a position to prove or disprove them. There may well be a significant public policy tradeoff between maximizing economic efficiency on the one hand, and maximizing safety on the other hand.

Question. You state that collective ratemaking, properly supervised, can enhance competition in certain regulated environments. Based on your experience, how does collective ratemaking benefit shippers and consumers?

Answer. Our rather rigorous analysis in California has convinced us that collective ratemaking (CR) can either benefit or work to the detriment of the public, depending on the regulatory environment in which it takes place. Therefore, we believe that the policy decision to wholly or partially allow antitrust immunity for CR should depend on the overall goals of the economic regulation (or deregulation) program in place.

If the goal of regulation is to provide all shippers, large and small, a more equitable degree of access to transportation service than would be forthcoming in a free market, then CR is an effective associated policy tool, along with other means such as common carrier obligations, anti-discrimination laws, public availability of price information, and observance of publicly posted prices.

Under a system of regulated common carriage, shippers benefit from CR by:

1. Fewer tariffs and tariff simplicity.
2. More orderly changes in rates.
3. Forums for proposals and negotiations.
4. Ability of smaller carriers to participate in markets.

Under a system of regulated common carriage, consumers benefit from CR by:

1. A more effectively competitive trucking market fostered by the participation of smaller carriers.
2. More effective competition in markets for goods moved by trucks due to the participation of smaller shippers.

If, on the other hand, the goal of public policy is to have trucking markets simulate nonregulated sectors of the economy, including privately negotiated pricing arrangements, then we believe there is really no justification for specific immunity. I have enclosed a copy of the complete staff report on this matter for your information.

Question. Some carrier groups are urging preemption of state regulations affecting interstate commerce. Are there any specific state regulations, other than safety regulations, which you consider absolutely essential?

Answer. The question seems to be founded on a view of federal-state relations that I find hard to accept. The question should be, "In what areas is federal preemption absolutely essential to ensure the free flow of interstate commerce?"

I believe it is necessary to reiterate that the California Public Utilities Commission is one of several state bodies with responsibilities involving trucking. Undoubtedly, these other agencies have strong views on essential state regulations that they administer which I am unable to represent. My remarks are focused on the regulations administered by the CPUC.

In California, we have been working diligently to ensure that only absolutely essential regulations are maintained. While I must admit that we are not always as successful as I'd like, there has been a continuing review process involving shippers, carriers, organized labor, academic experts, and other government agencies, as well as this Commission and the state Legislature. With this preface, the following are critical to the success of our regulatory system.

1. Regulations that allow us to identify business entities operating motor vehicles to carry property on a for-hire basis, and the nature of these operations.
2. Regulations that allow us to deny the use of public highways to for-hire carriers that don't meet financial responsibility standards (including but not necessarily limited to insurance).
3. Regulations that allow us to deny the use of public highways to for-hire carriers that don't meet reasonable fitness standards (such as excessive safety violations).
4. Regulations that protect shippers from unfair loss and damage, overcharge, and COD money handling practices of carriers.
5. The ability we now have to specifically tailor the nature and extent of price and entry regulation on an industry-by-industry basis, particularly where there is no involvement of federal interests.

STATEMENT OF PAUL O. ROBERTS, PRESIDENT, ROBERTS ASSOCIATES, INC.

BACKGROUND

During the Hearings of the Ratemaking Study Commission, I was the project Manager on a report prepared by Booz, Allen and Hamilition, Inc. entitled "Impact on Transportation Management of Changes in the Collective Ratemaking System". This report, prepared for the Motor Common Carrier Associations, was presented to the Ratemaking Study Commission and to its staff. I presented to the Ratemaking Study Commission and to its staff. I presented testimony describing the findings of the study at the Boston Hearing of the Ratemaking Study Commission.

The results of this study were based on carefully structured interviews of more than 500 shipping organizations. It used a statistically sound, market-segmented structure as the basis of the estimates of the impacts which the elimination of collective ratemaking could have on the management of the transportation process. It concluded, based on the results of the survey, that shippers believe elimination of the collective ratemaking process could result in substantial additional effort and cost in their transportation management activity. The cost was felt to result from adding more highly qualified staff and from increasing the use of computer support and outside services.

The study was undertaken in two phases. The first phase was a pilot evaluation of a limited number of shippers designed to test the preliminary segmentation schemes and to develop detailed survey methodology for the second phase. The detailed analysis performed in the second phase involved over 500 interviews with shippers to provide information direct from the marketplace on how transportation management would respond to possible market conditions under the proposed modifications to rate setting and what the cost and service implications to shippers would be as the result of the 1980 Motor Carrier Act.

In summary, the analysis indicated that the proposed changes in the law would result in shippers adding substantial numbers of staff and upgrading the skills levels of transportation and logistics management. These changes were needed primarily for the purpose of obtaining rate information and negotiating rates. There were indications that shippers would rely more heavily on computer support and outside professional services. The study also determined that shippers would attempt to deal with fewer carriers under individual setting of rates. It was estimated that the total incremental cost of shippers of the proposed changes would add between $4 and $8 billion annually to the cost of managing the transportation process.

Since the completion of that study and its presentation to the Ratemaking Study Commission in 1982, the Commission has presented its final report and congress is again examining the implications of the changes that have been wrought by the 1980 Motor Carrier Act and upon the need or lack thereof for further changes in regulation.

During the past three years I have had occasion to work with shippers on projects that involved various aspects of deregulation. In addition, I have performed individual interviews to determine the actual impact that has occurred as a result of the elimination of collective ratemaking and the imposition of the changes in regulation proposed by the 1980 Motor Carrier Act. In light of my previous involvement and my testimony before the Motor Carrier Ratemaking Study Commission, I am herewith submitting my current views. This report summarizes the findings which I have made as a result of these further investigations.

FINDINGS OF THE MOTOR CARRIER RATEMAKING STUDY COMMISSION REPORT

A major concern of Congress with the Motor Carrier Act of 1980 was its impact on small shippers and small communities. The Motor Carrier Ratemaking Study Commission came to a number of conclusions and made several recommendations to Congress as the result of their investigations. Among them are the following:

The Commission found that:

"The results of a variety of shipper surveys indicate that most shippers are small; that shippers place different demands on the transportation system and the trucking network".

They found that: "small shippers typically pay higher freight rates per pound".

And, that: "small shippers and shippers in small communities typically pay the undiscounted clas rates—i.e., the highest prevailing rates".

They also found that: "The most distinguishing characteristic of small community freight service is that a much higher proportion of shipments are interlined than is the case of service to major urban markets".

Finally, they note that: "There is, however, an orderly pattern of interlining involving many smaller carriers interlining with a relatively small number of medium and larger carriers".

The fact is, small communities are typically served by small carriers. Further, small shippers can be located anywhere but, are typically found in small communities. On the other hand, many of the small shipments are made by the very largest and best represented shippers, located in the large, well-served urban centers.

A major conclusion of the Commission was that:

"The collective ratemaking process is not designed to and does not have the widespread practical effect of preventing preference, prejudice, or discrimination with respect to different shippers, shipments and communities".

It would appear that the system of ratemaking, tariff publication, and enforcement that evolved under regulation all combined to effectively prevent "preference, prejudice, and discrimination" to small shippers and small communities.

The Motor Carrier Ratemaking Study Commission found:

"The regulatory reforms in the Motor Carrier Act of 1980, current market conditions and various administrative actions of the Interstate Commerce Commission have created a hybrid collective/independent tariff structure which is in some ways more complex than that in use prior to 1980.

In fact, with respect to small shippers, that complexity is precisely the problem. The party most unable to deal with this complexity is the small shipper. In order to take advantage of the increased competition which clearly exists in the motor carrier industry, a shipper must be prepared to put in more time finding a carrier that will serve him and exerting his leverage and negotiating skill to obtain a favorable set of shipment rates. This is clearly shown in Figure 1.

The determination of the freight charges for a particular shipment was less complicated prior to 1980 than it is today. The reason is that to take advantage of the discounting that exists, the shippers traffic manager must perform comparison shopping and/or negotiation. The small shipper frequently has no traffic manager and even when he does, there are typically no resources to gather alternative rate quotes or to negotiate lower rates.

The Commission's report notes that:

"Opportunities presented by technological developments in the computer/communications field, combined with potential tariff simplification measures, will allow carriers and shippers to develop a tariff structure which is much simpler to use than the current one".

But, as Figure 1 shows, the problem for the small shipper is contacting a suitable carrier and negotiating a favorable rate, not looking it up.

The small shipper is also concerned with the rate that his competitor is able to negotiate. Where his competitor is larger and better able to negotiate favorable rates, that competitor will have an even bigger advantage than before. This is a major difference between the situation that existed prior to 1980 and the one that exists today. Prior to 1980, virtually all LTL rates were the same to all shippers for a given origin, destination, commodity and shipment size. And, perhaps as important, they were known. Now, every shipper can negotiate a different rate discount. If in the future all rates are negotiated, it will be impossible to determine what a competitor is paying for his transportation. Even now it is difficult. Tariffs are filed with secret shipper codes, so it is impossible to be certain what shipper is the beneficiary of a given rate.

REVIEW OF THE FINDINGS OF THE ORIGINAL STUDY

In order to understand the implications of the findings of the original study, it is useful to review them briefly. The original study treated three separate aspects of the distribution system. It first developed a profile of the transportation management activity today. Secondly, it examined the impact of changes in the ratemaking process on the transportation management process. Thirdly, it drew overall implications for shippers in the United States as a whole. Each of these points will be examined.

The original study prepared a profile of the transportation management activity. A number of important implications were found. First, large companies with lower-value products tended to have more complex distribution requirements. For companies in the same commodity value range, complexity appeared to increase with company size. Similarly, for companies in the same size range, complexity was greater for shippers with lower value products. Thirdly, the more complex distribution requirements for shippers in these segments appeared to lead to larger, more sophisticated transportation management activities. That is, the larger companies with lower valued commodities typically had larger, more comprehensive transportation organizations. Their management in these companies performed a greater variety of transportation related tasks, including those that require a higher level of professional skill.

It found that shippers in all segments continued to rely on their traditional sources of rate information. It found that quotes from freight carriers were the primary source of rate information and that smaller companies and those that ship mostly collect with standard routes, rely most heavily on carriers for rate information. Other sources included Leonard's Tariff Guide, in-house rate books, or rate bureau tariffs.

It found that in the environment that existed at that time (1982), that most shippers do not need rate information in advance of shipment. The need for advance freight information, however, depends to a certain extent upon the type of shipment, the terms of sale and payment and the complexity of the shipper's typical routes. This suggests that advance rate information is most critical to the companies for which freight costs are a high proportion of total costs, companies which have control over the shipping route, and companies which have a variable route network.

All of these findings in the companies profiled suggest that smaller companies have a special problem and one that is quite different than that faced by larger shippers.

The second area addressed by the report was the impact of changes in the ratemaking process on transportation management. The findings were:

(1) That setting of individual rates by carriers would probably result in many shippers adding staff and computer capability and increasing the use of outside services. The survey showed that shipper's work load will continue to increase and that they would need additional staff if individual rate setting were increased. Since this has, to a certain extent, already happened in the real-world, we would expect to find that staffs have increased, or that there would be an increase in the use of computers and outside experts to obtain rates and to perform rate audits. It is clear that this has now occurred.

(2) Nearly half of the shippers surveyed in the original survey indicated that they would deal with fewer carriers under individual rate settings. They now do.

(3) If the originating carrier did not set up interline movements, shippers believed that a considerable burden would be added to their staffs and to their consignees to perform this function. This also contributes to the increase in staff. Shippers did indicate that they were unconcerned about the possibility of not being able to file a single damage claim under proposed interlining changes, but some did expect to arrange for their own freight insurance.

The study reached four major conclusions. These were:

(1) Actions that shippers forsaw in response to individual setting of rates nationwide would cost between $4 and $7 billion per year.

(2) Termination of interline ratemaking would cost an additional $.6 billion to nearly $1 billion annually.

(3) The estimated cost impact did not include the likely future need for more skilled staff by many shippers.

(4) Shippers overall were not prepared to meet the changes in the motor freight environment that the proposed modifications in the law could bring.

CHANGES THAT HAVE OCCURRED SINCE 1982

Since the original report was prepared in mid-1982, several important events have occurred. The major items will be summarized in the paragraphs below.

Perhaps the most important single thing that has occurred is the recovery of the economy from the recession which was in full swing in mid-1982. As observers know, the economy did not begin to recover until mid to late 1983, at which point it grew rapidly. Freight traffic which had been off by as much as 25 percent during 1982 finally began to recover in 1983. From that point the larger LTL companies had astounding year-to-year growth, averaging 20 to 30 percent per year. The smaller LTL companies recovered more slowly. In fact, at this time there are a number of mid-to-small sized carriers that have gone bankrupt or are on the verge of doing so. It would appear that economies of scale exist for larger LTL carriers. These economies are lacking in the smaller carriers who do not have dense service areas. Some of the medium sized carriers conduct quite successful regional operations, but small carriers have had to scramble to stay alive.

In spite of the economic recovery, discounting of tariff rates has continued and become almost universal. The reason appears to be continued overcapacity in the LTL portion of the industry. Although the base tariffs are still published collectively and the classification system has been maintained, every carrier has announced discounts that can be obtained by a shipper who actively seeks them. For large coporate shippers, it is possible to get very substantial discounts (from 30 to 50 percent) off of the published tariff rates.

Many shippers, and particularly the larger ones, solicit bids from carriers to service them. They typically share with the carrier the origin, destination and volume of commodities that are being shipped regularly by the shipper. They then ask the carrier to prepare a bid for all or part of this traffic. In some cases a contract arrangement is agreed upon between shipper and carrier with each individual movement priced spearately. In other cases, it is merely a discount of the basic tariff, as filed. Larger shippers have substantial leverage with carriers to obtain large discounts. Smaller shipper have virtually none.

Another major happening is the pervasive influence of truckload carriers and their competitive impact on LTL freight. Whereas a few years ago, approximately 60 percent of the freight volume was truckload traffic being carried by LTL carriers, that percent has dropped now to less than 15 percent overall. Truckload rates have been extremely competitive throughout this period and LTL carriers have been

unable to compete for truckload freight in most markets. The reason is primarily that truckload carriers are using non-union labor while LTL carriers are continuing to use a unionized labor force.

At the other competitive extreme, there has been a substantial growth in carriage by parcel and air freight. This portion of the industry has grown extremely rapidly. Vastly expanded authorities of LTL common carriers have also increased the competitive level. The result is that LTL motor carriers are under competitive pressure at both ends of their service spectrum, small shipments and truckload shipments. Traffic levels overall are still down, in part because the economy of the United States has become more service oriented. It contains substantially more imported goods than it did three years ago and the removal of these imported goods from the economy has shrunk the traffic base of LTL as well as truckload traffic.

A major consequence of this extremely competitive environment and the shrinking of the traffic base has been the appearance of substantial reduction in rates for some shippers. The discounts by LTL carriers have generated a state of euphoria on the part of many shippers. They are extremely pleased at these apparent freight reductions and don't want to go back to a system in which regulation might possibly disrupt this unusually favorable set of events. At the same time, LTL carriers are upset about the lower rate levels. It has produced a situation of "dog-eat-dog" competition among them and brought many to bankruptcy or to the point of bankruptcy.

Assessing whether or not there were real price increases in Motor Carrier rates is more difficult. General rate increases must be compared against inflation on the one hand and average levels of discounts on the other.

REVIEW OF RECENT FINDINGS

During the 1982 Hearings of the Motor Carrier Ratemaking Study Commission, the focus was on the elimination of collective ratemaking. At this point in time, single-line collective ratemaking, with certain exceptions, has now been eliminated. Congress seeks to determine information through the Oversight Hearings concerning the impact of the Motor Carrier Act of 1980 on the industry and the public.

This review concentrates on the impacts which further changes in ratemaking, tariff filing and/or enforcement might have for the shipper's transportation management process. Because of the vulnerability of small shippers and small communities, this report has forcused on these two elements. Small carriers are also addressed.

The methodology used in this review was an informal telephone discussion with shippers to determine their shipping characteristics and the manner in which they coped with the changes in the deregulatory environment encountered over the past few years. To the extent that it was possible, shippers interviewed for this review of the previous study were small shippers.

To be compatible with the previous study, the review will be reported along the same organizational lines as that described in the previous study.

Organization of the Shipping Function

There has been no radical change in the organization of the shipping function within most companies since the 1982 study. The interviews did confirm the original finding that the scale and sophistication of the shipping operations depended upon two major functions; (1) the value of the commodity to be shipped; and, (2) the scale of the overall operation.

In the earlier study we found that for the lower value commodities shipping costs per pound tend to be a higher percentage of delivered costs and therefore required more careful management control than higher value goods. With respect to scale, large organizations were more concerned about saving money in their shipping operations than were small ones. This is true because the size and scale of the traffic management function precludes significant activities for small companies. In a typical "half-man shipping department" the shipping function is overlaid with other responsibilities. Company size shows only limited correlation with the size of the shipping department. Once again, companies represented in the interviews were frequently subsidiaries or branches of companies headquartered elsewhere. In some instances, we talked with the traffic manager for the consolidated company, in others with the traffic person in the subsidiary company.

As before, we found that the single most significant shipper characteristic was the extent to which the shipper has routing control. This factor determines his price sensitivity and therefore his selection criteria for carriers. In general, those who ship pre-paid, select their own carriers, while those who ship collect may advise

their consignee on carrier and routing, but rarely have sole responsibility for its determination. During this series of interviews, we talked with no company who explicitly linked the input and output of its commodities in order to get price discounts through volume shipments.

The special needs of a shipper determine to a large extent the importance of service (as opposed to price) as a criteria for carrier selection. We found that a number of the companies interviewed shipped primarily truckload freight carriers; LTL carriers were used only as a way to handle small shipments to small places. Several of those interviewed were large, truckload shippers, but small LTL shippers and therefore had relatively sophisticated traffic departments, yet they still tended to handle their LTL shipments in an off-the-cuff manner.

In every case in which the major form of shipment was truckload, there has been relatively little or no change in the shipping environment since deregulation. Both prior to the Motor Carrier Act of 1980 and subsequent to it, truckload commodity rates were individually filed between origin and destination by commodity and frequently by shipper. Prices have held extremely constant in this arena throughout the last several years. As a consequence, there has been virtually no change in the truckload shipping environment.

In the less-than-truckload markets, however, the trend toward discounting has continued and evidence of distress on the part of small carriers was reported by several of those shippers interviewed. Many suggested that they expected to see still further bankruptcies in the less-than-truckload area as a result of "over discounting".

Carrier Selection and Rate Determination

The day-to-day activities performed by the shipper in his traffic management job involve choosing carriers and routings and determining the rates that will be incurred as a result of these choices. The carrier selection criteria have changed relatively little over the past three years. In virtually all of the larger shippers interviewed, however, a carrier selection process had been followed which involved an approved carrier list. This approved carrier list was determined by the corporate traffic department where one existed, and prenegotiated rate discounts had been negotiated with the approved carriers. In fact, it appeared that these carriers were selected in a trade-off between adequate service and the price discount that could be negotiated. The emphasis on service does not appear to have changed since the previous survey. In order to qualify for the list, a carrier must achieve certain levels of on-time pickup and delivery and show good claims performance.

Since the last survey, shippers have become substantially more computerized. In several cases, the interviewed shippers have implemented systems in which rate information is stored in a computer and shipments are automatically rated at the time the shipment is made. This can only be done where a price discount has been negotiated with each carrier. This is not an impossible task as long as the number of destinations shipped to and the number of rates and rate classes utilized do not become unmanageably large.

In all cases involving computerized information, the company was fairly large and had a large transportation budget even though it might have only a small amount of freight shipped by LTL carrier. The information had been prepared in the central office and was updated periodically by the central office staff.

In those instances in which the individual himself was responsible for determining the rate, he almost invariably used Leonard's Tariff Guide or some simple tariff pony. He then adjusted this rate by the individual carrier discounts with which he kept himself relatively familiar.

It appeared that in every instance in which the Bureau tariff files were used they were computerized. As a shipper in the original study summarized, "there is too much in the tariff files to keep up with it manually".

As before, among the smaller shipper there was dependence upon a fewer number of carriers. A somewhat larger number was characteristic of larger shippers, but it had been culled down from an original list of many hundreds of potential carriers.

The interviews showed that telephone quotes were still a popular way to obtain rate information. Some of the shippers interviewed however, used a shipper agent to consolidate the information on LTL rates and discounts for them and to select the carriers to be used for LTL shipping. The Leonard's Guide and homemade rate books are still widely used, since the existance of a single bureau class rate allows individual carriers to be represented by a single number for the most part, namely, their price discount.

As before, some of the higher volume shippers have made up their own rate books based on materials which the carriers provide. The original study reported that they

talk about getting frequent updates and new tariffs, and speak in somewhat resentful terms about the bother of keeping these internal rate books or files up-to-date: "stuff comes in daily; updating the files is a fulltime job".

The review indicated that this was still the case.

The Current Situation Under Deregulation

LTL Rate discounts have now been in force for the better part of 4 years. They are now "old hat" to shippers. As noted earlier, it is difficult to determine whether an individual shipper has experienced an increase or a decrease in LTL rates in real terms. The size of the discounts available vary by the size of shipper and his ability to negotiate. It is likely that rates have risen for the smaller shipper and for shipments to and from the small areas. As reported earlier: "there is a lot of discounting going on, but the little guy can't always take advantage of it. Once in a while it works, but don't count on it".

Consolidation is one way to handle the shipping problem faced by smaller shippers. A number of computer techniques for addressing the consolidation problem have appeared, however, consolidation involves a substantial amount of organization and coordination and most small shippers do not have the time or staff to be able to take full advantage of it. For the smaller shipper, the popularity of consolidation as a method of coping does not appear to have caught on in a substantial way.

There is some perception that since single-line rates may no longer be collectively made and that the small carriers have lost power to the big carriers who are now price leaders. There is a clear perception however, that it is more difficult now to determine rates than it was prior to deregulation. As one shipper said: "things are hairy out there and getting hairier all the time".

Other shippers interviewed pointed out that the bureau rates act as the "benchmark". An evaluation of the difference between carriers is carried out by examining the differences in discounts between carriers. This same interviewee volunteered his point of view that he: "doesn't see any advantage to abolishing bureau rates".

It is clear from the interviews that most shippers regard the publication function provided by rate bureaus not merely as the publication of tariffs, but the setting of a rate standard by which the discounts can be simply and easily measured. Clearly the same conclusion was expressed by one of the interviewees in the prior study when he said: "until someone comes up with something better, the bureau is needed".

Several of the shippers interviewed expressed concerns with the threat of continued discounting and the overly competitive environment and its impact on smaller carriers. Whereas in the previous set of questionnaires the respondents foresaw the bankruptcy of smaller and medium sized carriers, this set of telephone interviews actually recited the names of those carriers that have gone bankrupt in the interim period. In the prior study, shippers saw the smaller carriers as keeping their prices in line by being willing to undercut the larger carriers. At the present time, this is no longer the case. The larger carriers clearly have moved to exploit whatever advantage they have by being larger and by further expanding their territories. The smaller carriers ahve been forced into more remote service areas to avoid direct competition with the larger carriers. In the previous study, one respondent was reported to have said about small carriers:

"I think we have a responsibility for not beating these guys over the head if you want to keep them in business. It's not going to do you any good to beat them over the head and put them out of business. Ultimately we are going to suffer for it".

Changes in the tariff structure which cause the elimination of the publication of a single set of guide books or benchmark tariffs is viewed with some anxiety. A floating tariff system in which tariffs change day-to-day or are not published at all is extremely scary to most shippers. Decentralized publication of tariffs (or no publication of tariffs at all) is a particularly strong threat to firms who ship goods on an equalized basis. At present they depend on published tariffs to determine the portion of the freight rate which will be passed on to the customer (usually the rate from the nearest alternative source of the commodity). One noted that: "without publication we would have to hire a private investigator to know what's going on."

In general, there was also the feeling that it was extremely important to understand a competitor's shipping rates and how those rates compared with the rates used by the shipper.

CONCLUSIONS

Several conclusions come out of this review of the study done earlier and presented to the Ratemaking Study Commission. These are:

(1) It was not as important to know exactly what rates were when they were the same to all shippers, as it is now that rate discounts can be negotiated.

(2) All shippers have had to work harder to determine rates than they did before passage of the Motor Carrier Act of 1980.

(3) Small shippers benefit most by having available a clear statement of LTL motor carrier rates.

(4) Large shippers are generally in a better position to negotiate favorable rates with carriers than small shippers.

(5) The differential in rates between shippers will be further exaggerated by Government actions that work to eliminate the "benchmark" tariffs that still exist.

(6) The current environment favors large carriers over small carriers and carriers with "dense networks" over those with "sparse networks."

(7) Since small communities (and many small shippers) are seved by small carriers, those actions of the Government which further exaccerbate the disadvantages to small carriers of not serving origin to destination directly will tend to disadvantage all three parties: small carriers, small shippers and small communities.

FIGURE 1

COMPARISON OF THE SHIPPER'S PROCESS OF MAKING A SHIPMENT BEFORE AND AFTER MOTOR CARRIER DEREGULATION

PRE-MOTOR CARRIER ACT (1980)

TO FIND OUT THE FREIGHT CHARGES
- Obtain appropriate bureau tariff schedule or use Leonard's Tariff Guide
- Look up published rates for Origin, Destination, Commodity and Shipment Size

BASIC TRANSPORTATION RATES BY VIRTUALLY ALL CARRIERS ARE THE SAME AND THE FREIGHT CHARGES ARE IDENTICAL TO ALL SHIPPERS FOR A GIVEN ORIGIN, DESTINATION, COMMODITY AND SHIPMENT SIZE

TO MAKE A SHIPMENT
- Contact any trucking company that serves shipper and arrange for pickup
- Pack shipment, prepare bill of lading and render shipment to driver
- Pay shipment charges when bill is rendered

(Carrier arranges interline transfer if necessary)

THE CURRENT SITUATION (1985)

TO FIND OUT THE FREIGHT CHARGES
- Obtain appropriate numerous, unindexed individual carrier tariff schedules, or contact Motor Carrier directly
- Negotiate percent discounts from current published tariffs with most likely carriers
- Look up published rates for Origin, Destination, Commodity and Shipment Size and apply the negotiated discounts

TRANSPORTATION RATES BY MOST CARRIERS ARE THE SAME FOR A ORIGIN, DESTINATION, COMMODITY AND SHIPMENT SIZE. BUT, THE THE CHARGES DEPEND ON THE SHIPPER'S ABILITY TO ARRANGE A DISCOUNT

TO MAKE A SHIPMENT
- Contact a trucking company with whom you have negotiated price discounts and arrange pickup
- Pack shipment, prepare bill of lading and render shipment to driver
- Pay shipment charges when bill is rendered

(Most appropriate carriers are likely to serve shipper and consignee in direct origin/destination service; interline transfer may disrupt price discount)

COMPLETE ABOLITION OF REGULATION (1987)

TO FIND OUT THE FREIGHT CHARGES
- Survey trucking companies to find carriers who serve origin to destination market pairs typically shipped
- Determine which carriers are reliable
- Negotiate price with carriers for Origin, Destination, Commodity, Shipment Size and Annual Volume of shipments selected to cover points typically shipped
- Keep track of shifts in carrier prices and attempt to determine what shipper's competitors are paying for their transportation to markets in which the shipper is competing

TRANSPORTATION RATES FOR A GIVEN ORIGIN, DESTINATION, COMMODITY AND SHIPMENT SIZE ARE DIFFERENT FOR EVERY CARRIER AND THE CHARGES ARE ENTIRELY DEPENDENT ON THE SHIPPER'S ABILITY AND/OR LEVERAGE TO NEGOTIATE FAVORABLE RATES

TO MAKE A SHIPMENT
- Determine whether this shipment is covered by previously negotiated prices for Origin, Destination, Commodity and Shipment Size which can change daily. If not, go back to the previous step
- Contact a trucking company with whom you have already negotiated prices and which serves origin/destination in direct service, to arrange pickup
- Pack shipment, prepare bill of lading and render shipment to driver
- Pay shipment charges when bill is rendered

(Forget interline transfer without prearrangement)

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. You state in your testimony that your study concluded that, "shippers believe elimination of the collective ratemaking process could result in substantial additional effort and cost in their transportation management activity." On average, how many carriers were used by the shippers included in your survey? In the absence of collective ratemaking, how many carriers would these shippers use?

Answer. In the questionnaire underlying the original study, a specific question concerning how many carriers each shipper used was not included. However, a question that gets at similar information was posed. To the question "how will you deal with the proliferation of LTL rates in the future?" The response "try to deal with fewer carriers" was the most popular response of those given. Other responses included: (1) "present staff would spend more time getting rates," (2) "computers would be used more than they are now," (3) "new staff would be added to get rates," or that (4) "outside help would be used more." All categories of respondents favored dealing with fewer carriers, except the category of small, lower-valued shippers which slightly favored using more time by their present staff to get rates.

In a different question that addressed the shipper's need for increased rate negotiation in the event of further deregulation, one of the responses was "develop a close relationship with a few carriers." Alternative responses included: 1) "hiring specialized rate negotiators," 2) "seeking outside help on shipment costing," or 3) "expanding in-house shipment costing capability." Once again the highest response was for "dealing with fewer carriers."

Finally, in response to a question, which asked "Has your company begun serious planning for any of these possibilities?" The highest response was "try to deal with fewer carriers."

In a previous study conducted in 1979 for the Federal Energy Administration by Cambridge Systematics Incorporated, the question was posed precisely as stated here, "How many carriers do you use?" However, the universe sampled was shippers using truckload carriers rather than shippers using less-then-truckload carriers. In that study, up to 11 carriers were observed working for a single shipper. However, more than 50% of the freight was typically carried by the top two carriers.

As my testimony indicated, most shippers have now substantially reduced the number of carriers they use on a regular basis.

Question. What specific characteristics set the trucking industry apart from other U.S. industries so that prices, in your view, must be set collectively in order to be efficient?

Answer. The point of my testimony was not efficiency, but rather equity. Large shippers wield considerable power in the marketplace and can extract substantial price concessions from carriers, especially small carriers. Small shippers who have neither the volume of shipments, nor the economic clout to control the marketplace, have substantially reduced negotiating power in the marketplace and must accept LTL motor carrier prices as offered. For most other products, discrimination between buyers is not allowed. Differential prices may exist in the marketplace based on quality discounts or on the basis of service, but carriers should not be allowed to discriminate primarily on the basis of market power. In the regulated trucking industry, a posted price collectively established by a Tariff Rate Bureau is a price that all persons can see and use.

Question. In your testimony, you note that small communities typically are served by small carriers. For the shippers you studied, what proportion of the carriers providing service in small towns were regulated general freight carriers versus United Parcel Service, private carriers and exempt carriers?

Answer. The shippers that we studied are a part of the normal universe of LTL shippers. We would expect the average distribution of regulated general freight carriers, United Parcel Service Private Carriers and Exempt Carriers for the U.S. generally.

According to U.S. national statistics published in "Transportation in America" (a statistical analysis of transportation in the United States) expenditures in 1984 on ICC-authorized trucking services were $52.1 billion. Expenditures on non-ICC authorized were $68.1 billion and expenditures on local truck was $87.7 billion. Thus, out of the total of $208.4 billion, approximately one-quarter of the total goes to ICC-authorized motor carriers. Of that total, 25% goes to specialized carriers (primarily truckload commodity carriers). In turn, United Parcel Service revenues account for almost 11% of ICC-authorized motor carriers revenues. It is difficult to obtain equivalent measure of revenues for Exempt Carriers. However, they constitute a relatively small portion of the traffic that is LTL. Exempt Carriers carry mostly agriculture exempt products in truckload quantities and do not carry much LTL freight.

The original questionnaire asked carriers to foresee how the company would respond to a large increase in the number of poorly financed, marginal carriers, competing for LTL business. A possible response on their part was to establish or expand their own private fleet operations. Almost 15 percent of the sampled population indicated that as a possible reponse. The type of shipper most interested in this is a strategy for the future was the large, low-value shipper.

In the original questionnaire, there was also a question regarding interlining. If the shipper was not able to file a single damage claim to cover all participating carriers, what would the shipper do? One of the responses was: "increase the use of parcel post, air freight, United Parcel or rail service." Very few respondents answered affirmatively to this question.

Question. You state in your testimony that if all trucking rates were negotiated, it would be impossible to determine what a competitor is paying for his transportation. Why do competitors need to know each other's transportation costs?

Answer. It is not in the best interest of establishing a competitive environment to have products which sell at different (and unknown) prices in the same market-

place. In most other industries, it is possible for producers to determine the price of their competitor's products. Competition is enhanced through this knowledge of price. When a store has a sale, the sale price is well-known and others are challenged to compete with it. If transportation prices are unknown, competitors in the same market will not compete with the same transportation prices. Therefore, it is in the best interest of competition to have transport prices that are known, not secretly established and beneficial to large and powerful shippers.

Question. You state that nearly half of the shippers surveyed in your original survey indicated that they would deal with fewer carriers under individual rate settings. You went on to note that these shippers now do so. What has been the rate and service experience of these shippers now that they are dealing with fewer carriers?

Answer. Most of shippers that we interviewed were quite pleased with both the rate and service experience they had achieved in the less regulated environment in which carriers are currently operating. However, it important to note that the marketplace in which these carriers are competing is unusually competitive at the moment, since there is dramatic overcapacity in the LTL industry. This overcapacity is caused in part by the fact that the economy has operated at a lower production level since the recession. A second reason is that a substantial amount of traffic has been diverted from LTL regular route carriers to truckload carriers, therefore, the LTL industry as a whole has had to shrink to adjust to the new size of the LTL marketplace. As a consequence, LTL freight is down substantially. LTL rates, therefore, are extremely attractive to LTL shippers because of this overcapacity in the system.

Though they may not yet appreciate the situation, smaller shippers are disadvantaged by not being able to claim discounts which are as large as those negotiated by big shippers. Smaller carriers are also disadvantaged in this marketplace. Increaseingly they cannot compete in the larger, longer-haul markets and are forced to operate in more local markets. However, in some cases, traffic that used to be originated or terminated on small, local carriers and interlined with one of the larger, transcontinental carriers is now being originated and terminated by the larger carrier. The reason cited by the shipper's Traffic Manager for using the larger carrier is that the traffic manager can negotiate rate discounts only on that traffic that is carried in single-line service. As this consolidation of the industry continues, the carrier alternatives avaliable to shippers will eventually disappear altogether.

STATEMENT OF HERBERT KOTZEN, C.H. ROBINSON CO.

Mr. Chairman and members of the Committee, The C.H. Robinson Company is pleased to offer the Committee the benefit of our experience under the Motor Carrier Act of 1980, our view of developments in the trucking industry since 1980, our company's view as to trucking industry prospects for the future, and our suggestions as to next steps in the regulatory arena. The Department of Transportation and several trade associations may offer you general statistics. We can provide you a firsthand, on the ground view of what's happening in the industry.

The C.H. Robinson Company is in touch with almost all sectors of the trucking industry. The C.H. Robinson Company has over the eighty years since its origin in 1905 grown to be a substantial broker and distributor of fresh fruits and vegetables in the United States and internationally; a shipper, packer and sales agent for agricultural producers; a provider of equipment finance; a full service finance company offering insurance and other services in the Minneapolis area; a regulated carrier of general commodities; a contractor of exempt freight services; and, we believe, the largest broker of truck transportation in the United States.

We have been involved in regulated transportation since the mid 60's and currently own an irregular route common and contract carrier with estimated revenues for 1985 of $40 million. We also hold a property broker's license and utilize contract carriers to move a wide variety of regulated commodities. We have over 20,000 pieces of equipment under contract to us and the number is growing. Since 1953 we have been active in the exempt motor carrier field and in 1984 we moved over 200 thousand truckloads of exempt freight.

We transport and broker an extremely wide range of commodities. Truckers like to say that if you have it, a truck brought it. We can say that pretty often that truck was contracted for or brokered by one of the Robinson companies. We service small towns and large. We compete with, complement and occasionally substitute for private and common carriage. We are primarily in truckload operations, but we are an attentive observer of the less-truckload market. We deal with tens of thou-

sands of truck operators every year, and our operations, based in 44 offices, touch every state.

Over-all, we think the measure of deregulation achieved in 1980 has been extremely good for the transportation industry. It has made us more flexible, able to react quicker to market conditions, and allows us to perform additional services. Deregulation has increased competition, improved service and most importantly reduced costs to the American consumer. We would urge the Committee to finish the deregulation job begun in 1980.

I will divide my comments into three segments: experience under the Motor Carrier Act of 1980; problems with the Act as it now exists, and needed next steps.

We have had five years of experience under the MCA since 1980. The nation has been through a business cycle of recession and expansion. The recession coincided with the surge of new competition resulting from the MCA, and created a severe test for the industry.

The industry has survived. The trucking industry is leaner, more efficient, more flexible, more effective, and more customer oriented. There have been and will be bankruptcies. But even so, the number of carriers has increased, the service levels with which we must compete have improved, and shippers are being well serviced.

We know small towns are being served, at least as well as before 1980. We serve small shippers as well as large. Let me tell you, truckers are out there looking for freight, whether it comes from or is going to Dime Box, Texas or New York City. We are looking for business from Blue Star Foods as well as General Motors. Many truckers are competing to handle those same shipments. The transportation fabric of this country is whole and evidence points to it staying that way.

Trailers have on average been getting larger. Truckload rates have, we believe, increased less than inflation in most situations and have often decreased since 1980. In our view, most shippers are getting more transportation for their money in 1985 than in 1980, with better service.

The trucking market of 1985 is not an easy one for a trucking company. We find our own carrier operations under heavy competitive pressure. We have, frankly, seen more growth in brokerage operations than in carrier operations. But we understand the rules of the competitive game. We have a long history of growth and profitability, in highly competitive businesses, and we expect to continue to expand our brokerage operations. As to our carrier operations, we have been using a finer pencil at the drawing board and we will continue to refine and improve the trucking operations until the combination of improved operations and changing supply-demand relationships permits us a better profit. All other trucking companies face the same challenges. The system is known as competitive free enterprise and we believe in it.

We understand that some elements of the American Trucking Associations want to retain collective rate making. We are a member in good standing ATA, but we don't believe in this position. Entrusting the vital pricing function to a committee of competitors is the antithesis of Robinson's way of doing business. We respond directly to our customer, based on his needs and our capabilities. We quote prices promptly, flexibly, and in accord with current market conditions. Rate bureau pricing is cartel pricing. It penalizes the American consumers, it carriers a heavy burden of bureaucracy with it, and it is a millstone around the neck of an efficient flexible transportation system.

What problems do we face today? The deregulation job is only half done, or less than half done. The Interstate Commerce Commission's main function is shuffling paper. It is wasting the government's time and money, and the truckers' time and money, in rubber stamping thousands of applications it invariably approves, in receiving tariffs it never reviews, in looking at acquisitions and certificate transfers it considers exempt from its approval process, and in maintaining enforcement offices which have basically little need to enforce any law of substance.

I believe there are many trucking companies who now, were they to speak up, believe the Interstate Commerce Commission is more trouble than it is worth. It no longer gives the regulated truckers much if any monopoly power. Safety regulation can be handled by the Department of Transportation. The Commission has no function of value to shippers that we can see and it has no function of value to us.

To give the current commissioners their due, many of them have tried and are trying to reduce the remaining regulatory burden. Until Congress tells them they can cease to license carriers, cease requiring tariffs, stop requiring annual reports, stop prescribing records and examining them, and so forth, the Commissioners can only reduce rather than eliminate waste.

We estimate the that ICC regulations, including record keeping, tariff, trip leasing, and other regulations, cost us five percent or more above truck costs in the

exempt sector. That five percent cost burden is unnecessary. If you would eliminate it, we could more easily operate contract and common carrier services, across the full range of general commodities. In prior testimony on the freight forwarder bill, S. 1124, in which we also recommended an exemption from regulation for frozen foods transport, I described some of the ways in which we could improve efficiency.

While the deregulation job is unfinished at the federal level, it has hardly begun at the state level. An examination of a compilation of state regulatory laws made by a motor carrier lawyers' association indicates that in over forty states there has been no significant move to free up trucking markets from the outmoded, 1930's style of regulation abandoned at the federal level in 1980. Worse, a visit to a meeting of the National Association of Regulatory Commissioners' Task Force on uniform state regulation revealed that many in that group envisage an effort to replace diminished or eliminated Interstate Commerce Commission regulation with a pervasive network of state regulatory activities.

We must urge this Committee to beware of a state regulatory backlash, and to take steps to prevent state regulatory activities proliferating and burdening interstate trucking.

How would we suggest the Committee on Commerce, Science, and Transportation spend its own limited time and resources in the truck transportation area?

First, we suggest that you promptly finish the job of deregulating interstate trucking and terminate the functions of the Commission as to this area of economic actively.

Second, exert some strong leadership to influence the states to abandon any attempt to fill a regulatory vacuum left by the Interstate Commerce Commission. Perhaps you will need explicitly to preempt state laws which would be inconsistent with federal transport deregulation, and which could directly or indirectly burden interstate commerce.

Third, give close and continuing attention to the efforts already begun to harmonize and simplify diverse and inconsistent state registration and tax practices. Here is where you can help the trucking industry to become more efficient. You have created some mechanisms to begin harmonizing inconsistent state practices and streamline carrier identification and tax payment arrangements. The NARUC task force has come up with some interesting proposals on carrier registration, including insurance verification. The National Governors' Association is, with the support of the Federal Department of Transportation, beginning to define some ideas for simplifying vehicle registration and taxation. In our view these efforts should continue. They will bear some fruit if and only if your Committee very visibly sustains a strong interest in getting substantial simplification results. You need to be on record, visible, and urgent in your direction to the state bodies now considering additional harmonization of state registration and taxation practices.

Once we have cleared the regulatory debris from the stage, there are a number of potentially productive initiatives which could be considered. In aid of doing a good job for the shipper, profitably, the C. H. Robinson Company takes a strong interest in the nuts and bolts of transport operations. We would like to see research and development to improve truck productivity. We have a strong interest in an educated, self reliant, stable and healthy population of owner operators. We are interested in mechanisms permitting ready, inexpensive identification of health hazards, insurance problems, and other sources of breakdown in trucking operations. We would like to see more discussion of whether and to what extent the federal government can play a productive role in promoting research and development, improving the skills of the owner operator and driver populations, and facilitating information transfer relating to health, insurance and other safety related problems.

One of the hidden costs of misguided economic regulation of trucking has been our preoccupation with the issues raised by economic regulation, to the neglect of other efforts which might improve the efficiency of the trucking system. We'd like to see more attention given to the science and technology of trucking, and to improving the human resources in it. For the reason also, at this point five years from the 1980 landmark of the Motor Carrier Act, we urge the Committee to finish the deregulation task begun in 1980.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. Do we believe trucking companies are engaged in predatory pricing?

Answer. No.

We believe that some trucking companies may not have a good knowledge of their costs, and might make below cost quotes on occasion, but the market cleanses itself of such companies. Some companies may have excess capacity, and price below long run costs but above current costs until the excess capacity is consumed. But this is a normal market adjustment.

Robinson does not price below long run costs for the purpose of eliminating trucking competitors and does not believe that any sizable trucking company is likely to pursue that strategy. If you eliminate one competitor or a few, dozens more will come into the market if and when you try to raise truck prices above a competitive level.

Most importantly, Robinson does not believe that there is any need for a federal regulatory agency to control prices to prevent predatory pricing. An effort to regulate rates so as to control "predatory" pricing would inevitably degenerate into a huge paper shuffle multitudes of attempts by truckers to persuade the regulatory agency that more efficient companies cannot possibly charge less than they can, higher prices to shippers, and penalties to the consumer. Such a regulatory effort would be a huge step backward.

We also note that in a fully deregulated regime, antitrust laws could be relied upon a deal with below-cost, predatory pricing to the extent it might rarely occur. The difficulty in making an antitrust case on predatory pricing may appropriately reflect the rarity of the practice, at least in trucking.

Question. The Regular Route Common Carrier Conference, among others, has testified that collective ratemaking benefits shippers and is not anticompetitive. What is your view of this position?

Answer. Our view is that collective ratemaking is anticompetitive, harms shippers, and in no significant way improves efficiency in the transfer of accurate market signals concerning competitive prices.

The Robinson Company has been in business over seventy years, works with thousands of trucking companies as a broker, and has substantial carrier operations itself. Robinson does not believe any competent trucker needs to set prices collectively.

At this time, collective rate making is primarily a means of setting a higher than competitive benchmark price from which competitive market forces compel extensive discounting. Those who pay at or near the noncompetitive benchmark are those lacking knowledge and alternatives. Thus, collective rate making is responsible for much of the discounting that the regular route common carriers decry.

Apparently some carrier representatives have suggested to the Committee that the discounts are bad for small shippers and might be predatory. To the contrary, the unwary or uninformed shipper, or the one with few alternatives—typically the smaller and geographically removed shipper—is victimized by the carrier agreement on the high benchmark. In other words, collective ratemaking is likely to burden small shippers and small towns more than sophisticated larger shippers and shippers in large towns where there are apt to be many carrier alternatives.

A more sophisticated argument for collective rate making is that it would not exist in a competitive truck market if it had no use, and cannot harm consumers because there are too many truckers to allow rate enhancement. This argument is in error.

The lack of bureau activity in truckload traffic where there are many carriers suggests that the practice serves neither shippers nor carriers in that market. In the less-truckload market, where there are not as many effective competitors, the practice seems to serve the interests of carriers but not shippers. There is a "demand" for collective pricing among carriers who seek to raise prices and feel competitive market forces will deprive them of some but not all of the price enhancement sought. We see no "demand" for bureau activity among shippers. The chief usefulness of the practice is to realize higher prices from some shippers than would be possible if the carriers could not agree upon benchmark prices.

In our view, as a carrier, collective pricing is bad for carriers as well as shippers. Bureau pricing makes your prices inflexible, and deadens your sensitivity to market forces. A carrier with non-competitive costs can fool itself, thinking it is efficient when it is covering excessive costs by means of above-competitive prices. Also, the carrier is not receiving, attending to, or responding to shipper demand signals with the sensitivity and precision which is developed in a competitively priced market.

Robinson has found that carriers, shippers, and brokers do not need carrier-agreed "benchmark" prices to do business efficiently. The competitive market creates going rates, and the shipper, carrier and broker can usually determine the going rate quickly. Under current conditions, the goal of carrier collective pricing is to create noncompetitive, high benchmarks.

Question. You urge Congress to take steps to prevent state regulatory activities proliferating and burdening interstate trucking. What specific types of regulation need to be preempted.

Answer. Robinson would like to see as much preemption of state economic regulation, taxation, registration, and size and weight regulation as is constitutionally and politically feasible.

The types of state activity which burden interstate trucking include economic regulation, diverse and burdensome registration requirements, diverse tax requirements, and diverse vehicle physical characteristics requirements.

Those aspects of economic regulation which most burden interstate commerce are, generically, restrictive licensing for operations, tariff requirements and regulations of rates, and record keeping requirements.

Restrictive state entry controls can burden interstate transport in a number of ways. For example, states limit licenses for hauling the intrastate leg of an interstate flow of goods. Many goods move interstate with stop-offs at warehouses, creating intrastate origination and termination moves. Restrictive state licensing interferes with efficient handling of such shipments. The interstate carrier can move the goods to or from the warehouse in the interstate leg. But the interstate truck cannot after dropping off a shipment at the warehouse pick up a complementary move from the warehouse to an intrastate destination, or bring trucks from in-state origins to the warehouse where it could pick up complementary interstate movements.

State entry controls affect brokerage as well as carrier operations. Thus, to some degree state entry controls inhibit the development of efficient interstate brokerage systems.

Although the entry controls are the primary problems, along with state entry controls go price controls, recordkeeping and report requirements, control of carrier contracts, dispute resolution controls, and other bureaucratic, cost-raising regulatory procedures.

Vehicle leasing regulations designed to protect for-hire licensed carriers from competition also impede efficiency. Therefore a preemption provision should be broad enough to prevent the use of leasing regulations to regulate entry into for-hire trucking.

It is important that any preemption be as clear and unambiguous as is possible, to avoid years of state-by-state litigation to determine ground rules. Of the two approaches discussed thus far, the National Carrier concept in H.R. 3222 seems likely to create a clearer field for interstate trade flows than would use of the "affecting commerce" test. If the "affecting commerce" test were used, legislative history would seem needed to identify at least some of the situations considered likely to "affect commerce".

If substantial uniformity and unification in state-by-state carrier and vehicle registration arrangements cannot be put in place in the near future, a federal mechanism should be put in place for interstate carriers, which supersedes state requirements. We should aim for a simple, single national registry for interstate carriers, vehicles and drivers. Robinson believes that the right to operate interstate should be paralleled by interstate responsibility. We want to see a simple, efficient system for registration, effective for notice to all states. We would have no objection to the data being accessible by shippers, carriers, insurance companies, state enforcement officials, and potential claimants against a carrier or driver.

We note that Section 28 of H.R. 3222 provides one mechanism for achieving greater state uniformity as to "vehicle registration, fuel tax, and third-structure tax requirements". However, the language of Section 28 does not seem to provide for federal assumption of carrier and vehicle registration functions, should an efficient uniform state system not be evolved. We could support Section 28 of H.R. 3222 more readily if it were modified to allow for a federal registration mechanism in the event of failure of the states to produce an acceptably efficient system.

Robinson's concern about varying and inconsistent fuel and "third structure" taxes is addressed by Section 28 of H.R. 3222. The Robinson company strongly urges enactment of some such mechanism to require the states to come to a much more efficient, unified system of taxing interstate carriers.

STATEMENT OF MARTIN T. FARRIS, PH.D.

My name is Martin T. Farris and I reside in Scottsdale, Arizona. I am a Professor of Transportation in the College of Business, Arizona State University, Tempe, Arizona, and have been a faculty member at ASU since 1957. I earned my B.A. and

M.A. in economics at the University of Montana, and the Ph.D. in economics at the Ohio State University. I am co-author of six books on transportation, public utilities and regulation, and author of over 125 articles, reviews and reports on various aspects of transporation, public utilities, regulations, and managerial economics. One of my textbooks, DOMESTIC TRANSPORTATION: PRACTICE, THEORY AND POLICY has appeared in five editions and has been one of the leading transportation textbooks in U.S universities since 1966. However, it should be clearly understood that my remarks do not constitute an official position of Arizona States University nor the College of Business therein and that my statement is solely that of an interested student in transportation regulation.

VITAL ROLE OF TRANSPORTATION IN INFRASTRUCTURE

There has been considerable public and Congressional concern with the infrastructure of the U.S. A part of that concern led to the passage of the Surface Transportation Assistance Act 1982 dealing with upgrading the physical transportation infrastructure. However, physical facilities are but one part of the infrastructure of the economy. Another portion considers the economic infrastructure. This element is somewhat harder to visualize and measure, yet it is of equal importance and affects the total economy.

Transportation is a pivotal factor in the economic infrastructure of the U.S. Economic infrastructure is based upon an economically reliable and financially sound common carrier system that is available to all shippers and all parts of the nation at reasonable and nondiscriminatory rates. This was recognized by Congress in Sec. 3(a) of the Motor Carrier Act 1980:

"The congress hereby finds that a safe, sound, competitive, and fuel efficient motor carrier system is vital to the maintenance of a strong national economy and a strong national defense."

In order to flourish, it is necessary to have a reliable and financially sound motor transportation system. Transportation is the "life-blood" of the economy—the veins and arteries through which commerce flows. With the human body, when the arteries cease to function effectively, pain and distress will be the result. I know this phenomena personally having had open heart by-pass surgery 18 months ago. With the economy, once motor transportation ceases to function effectively, pain and distress will be the result. As we all know, almost all shipments go at least part of their journey by truck. The motor carrier system is the most comprehensive and widespread of the transportation modes serving the most points and the motor carrier system moves the widest variety and diverse complex of goods of the modes of transportation. Congress was absolutely correct to emphasize the vital nature of the motor carrier system.

NEED FOR CERTAINTY

Another aspect of this vital nature of transportation that is sometimes overlooked is the important role reliable and financially sound motor carriers play in the flow of commerce. It is mandatory that manufacturers, parts suppliers, distributors, and retailers have a high degree of certainty about motor transportation. to effectively market, the seller must be able to transport. The seller must know the price that transportation will cost and that a dependable and reliable carrier is available to move the goods. If transportation cost is unknown or uncertain—or if the service available is unknown or uncertain—it is very difficult for the seller to deal effectively with the buyer. We see uncertainty in price and service in the less developed countries of the world and sometimes in our own foreign trade with the result that the flow of commerce is difficult or impeded. Therefore, a high degree of certainty is necessary for the free flow of commerce for business to plan ahead and for effective buying and selling of goods.

ATTRIBUTES NECESSARY FOR CERTAINTY

A high degree of certainty in transportation means several things. First, carriers must be devoted to serving all comers. This is implicit in the term "common carrier"—"common" meaning "public"—the common law obligation of carriers inherited from England in colonial times. Second, carriers must serve in a reliable and dependable manner. This is implicit in the common law obligation of duty to deliver (to the correct party, with dispatch, and with the goods in the same physical condition as when they were tendered for shipment). Third, carriers must serve without discrimination. This means all shippers under similar circumstances and conditions must be treated equally. Finally, carriers must avoid unreasonable charges—both

unreasonably high and unreasonably low. These four aspects of certainty make up the longstanding and well founded common carrier obligations and duties found in common law and statutory law. The desirable element of certainty is missing unless motor carriers serve all comers, with reliable service, without discrimination, and with reasonable rates.

DISCRIMINATION ERODES AWAY CERTAINTY

Certainty is necessary in order to plan and make intelligent managerial decisions. Certainty is likewise necessary in order to buy and sell—i.e., carry on commerce. Unequal treatment or discrimination takes away certainty. If the seller cannot be sure of the transportation costs that will be charged on the goods he or she sells or if the seller cannot be sure of the transportation costs that will be charged on the goods he or she sells or if the seller cannot be sure if reliable service will be available and when delivery will take place, he or she is at an economic disadvantage. A system of motor transportation that is nondiscriminatory in terms of rates and in terms of services is inherently more fair and leads to a higher degree of certainty.

The problem is in understanding what is meant by discrimination. This topic is of special interest to me and is the subject of Chapter 12 in a forthcoming text that I have co-authored called MANAGERIAL ECONOMICS. Further, I am particularly interested in transportation discrimination and have author an article, "Discrimination in Transportation and Antitrust Laws," ICC Practitioners' Journal (May-June 1979), pp. 509–525, on this subject. Perhaps my remarks on discrimination will be of some assistance to this Committee.

GENERAL USE OF THE TERM DISCRIMINATION

The term "discrimination" has many meanings and is used in numerous contexts. The general term is widely used by the public today relative to sexual discrimination, racial discrimination, age discrimination, religious discrimination and so forth. More broadly, it is common to hear complaints that individuals, organizations and institutions are being "discriminated against" ot "discriminated in favor of", etc.

Quite obviously the root of discrimination is unequal treatment in some way. Any time a person or group or organization or institution feels that it is being treated unequally from others, the charge of discrimination is likely to be heard. And as has been evident over and over again, it is very difficult to define what is meant by unequal treatment. Even so, the charge of "discrimination" in the general sense rather depends upon whom one is talking to at a given time yet always implies unequal treatment.

ECONOMIC AND LEGAL DEFINITIONS: PRICE DISCRIMINATION

The economists have long had a theory of price discrimination and to some degree this economic theory of price discrimination is reflected in the antitrust laws of the nation. Please note the emphasis here is on price discrimination—a particular type of discrimination of interest to the economist. Here the standard economic definition is "price discrimination is any difference in prices charged for the same goods or service to different customers which do not reflect differences in marginal costs."

Differences in prices, called "price differentials," are extremely common in our economy. The differences may or may not also constitute price discrimination. For examples, differences in prices may occur due to: (1) age of the buyer (discounts to youth or elderly), (2) quantity of purchase (the giant economy size package), (3) newness of customer (special subscription rate in magazines to new customers), (4) clock-time of purchase (lower priced tickets for matinee performance), (5) calendar-time of purchase (January white sale), (6) income or wealth of buyer (medical pricing and "toney" shops), (7) location of the buyer (slightly higher price west of Mississippi), (8) use of the commodity (government sanctioned milk pricing), (9) market function (wholesale prices lower than retail prices), (10) status of buyer (military or clergy discounts), (11) differences based on gender (Ladies' Day at the track) and so forth.

Now to the economist, price differences are common and widespread. However, price discrimination exists only where the price differences do not reflect differences in marginal costs. If it costs 10 cents per pound less to sell 1,000 pounds rather than one pound, then the price should be 10 cents less per pound and this difference in the price of the same commodity is not price discriminatory. Interestingly, charging everyone the same price in a national market with a single point of production (say Hershey bars at 35 cents everywhere in the U.S.) may be price discrimination since it obviously costs more to sell in a distant market than in a market close to the point of production (to sell a Hersey bar in California costs more than the same sale

in Pennsylvania, but the price is the same). Here no price differential exists but price discrimination does exist.

Marginal costs, while easy to define and put on the blackboard, are notoriously difficult to determine in the real world. Marginal cost refers to the cost of one more unit of production and implies exact and proper allocation of all costs of production, distribution and sale. Because of the difficulty of determining marginal costs, the economic definition is really only an ideal and is not a workable definition of discrimination. Yet it does provide a theoretical base and ideal definition of discrimination—and this is its strong point.

Additionally, price discrimination is prohibited in our antitrust laws. But note this is only price discrimination. Additionally, this legal prohibition against price discrimination in both the Clayton Act and the Robinson-Patman amendment follow, at least partially, the economic definition of price discrimination. But in an attempt to make the economic definition workable, the legal definition adds several limitations. First, price discrimination is illegal only when the effect "may be substantially to lessen competition or tend to create a monopoly in any line of commerce." Second, price discrimination is illegal only where it does not make "due allowance for differences in cost of manufacture, sale or delivery." Third, price discrimination is illegal only where it is not made "in good faith to meet an equally low price of a competitor."

As every student of antitrust knows, these "limitations" of "substantially lessen competition," the so-called "cost-defense," and the so-called "good faith defense" have led to endless litigation and extreme difficulties in applying this part of the antitrust laws to manufacturing, purchasing, and retailing. Much of the difficulty with the "cost defense" turns on arguments over cost allocation (even when a single or a few products or services are involved). Interpretation of the term "may" in "may be substantially to lessen competition" is difficult—and—"substantially" leads to arguments over degrees of concentration of firms, etc. Another problem is what is meant by the "meet not beat" competition doctrine in the "good faith defense." While some contend that the antitrust laws relative to price discrimination will adequately protect the public against discrimination in transportation, I have serious doubts based on my study of antitrust. In my article cited above, after consideration of the cases involved in the above mentioned limitations, I wrote:

"It seems safe to say that the case law interpreting price discrimination is neither particularly consistent nor absolutely clear. Antitrust law, as interpreted by the courts, does not always mean what it seems to the casual reader. Perhaps those contending that the Clayton Act will protect the public interest in transportation should wander into the 'vast wasteland' of antitrust law a bit before allowing themselves to be convinced that this alternative is a viable one."

TRANSPORTATION DISCRIMINATION

Turning now to transportation discrimination, it should be noted at the outset that the concept of prohibiting transportation discrimination is broader than the economist/legal definition or concept of price discrimination and control of transportation discrimination is more practical and workable in its application.

Under transportation law, there are essentially two types of discrimination that are prohibited: personal discrimination and undue preference or prejudice (often called General discrimination Against Places and Commodities). Both rate and service discrimination are involved—not just price (rate) discrimination as with economic theory or antitrust law. Hence, the prohibition of transportation discrimination is broader and more inclusive than the economic/legal concept of price discrimination.

Personal discrimination is not allowed and this prohibition is really an attempt to conceptualize the general meaning of discrimination (as noted above) into the transportation law. In effect it says: a common carrier cannot charge persons different rates for substantially the same service, and common carriers cannot give more or less service to one shipper (or receiver) of freight than another when charging both the same rate. Both rates and service are involved and this should be emphasized. Literally, all shippers of the same commodity between the same two points must be charged the same price and must be given the same service. In effect, persons may not be treated unequally "Under substantially similar circumstances and conditions." For example, if shipper X wants a motor carrier to carry 3,000 pounds of widgets from A to B, and shipper Y has a like 3,000 pound shipment of widgets from A to B, both must be charged the same rate and given the same service. Both must be treated equally.

Personal discrimination involves more than merely price or rate rebates. The whole area of service is involved, such as supply of vehicles, pickup and delivery,

extension of credit, providing extra services unequally, special contracts, loading or unloading at a charge to one shipper but not to another and so forth. A considerable body of case law has been developed over the decades since personal discrimination was first prohibited in 1987. The point is (a) in transportation law the meaning of discrimination is much broader (includes services) than in antitrust law, and (b) in transportation law, many actions which are common in a non-regulated competitive environment have been judged to be anti-social and unlawful due to the importance of the common carrier concept and the need to have absolute equal treatment of shippers under substantially similar circumstances and conditions. Burden of proof is on the carrier in charges of personal discrimination.

The second type of prohibition of discrimination in transportation law is undue preference or prejudice. Generally this applies to places and commodities and the statute reads:

"It shall be unlawful for any common carrier subject to the provisions of this Act to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue and unreasonable prejudice or disadvantage in any respect whatsoever."

It should be noted that both prohibitions against discrimination were reaffirmed in sec. 11(4) of MCA 1980 (as well as the application of antitrust law to transportation) where it says:

"Any rate implemented by a carrier pursuant to this subsection shall be subject to the antitrust laws as defined in the first section of the Clayton Act (15 U.S.C. 12), . . . Nothing in this subsection shall limit the Commission's authority to suspend and investigate proposed rates on the basis that such rates may violate the provisions of section 10741 of this title or constitute predatory practices in contravention of the transportation policy set forth in section 10101(a) of this title."

Returning to General Discrimination, it should be noted that treatment in rates and services need not be strictly equal but rather it is only "undue and unreasonable" discrimination which is illegal. The determination of what is "undue and unreasonable" preference or prejudice has been left up to the Commission—and over time a whole set of rules or conditions have evolved in case law to define what is "undue and unreasonable." For example, injury must be shown, competition must be real and substantial, differences in rates between raw materials and finished goods of the same commodity are allowable, and so forth. It is to be noted that when differences in costs or value can be established, differences in rates are not considered "undue or unreasonable." The burden of proof is on the complainant. Also note the whole concept is philosophically an application of the economic/legal definition of discrimination.

Relative to commodites, the "undue and unreasonable" preference or prejudice rules are reflected in the concept of freight classification. Some 16 principles of classification have evolved over time (recently reduced to four principles by the Commission), mostly dealing with differences in costs of transportation or value of the commodity. Differential pricing is not "undue" if it reflects costs of service or value of the commodity. Since marginal costs (or per unit costs for that matter) are so difficult to determine, freight classification is based on differences in cost or value. Items are classified on the basis of their transportation characteristics (such as density, volume, cost of handling, manner of packing, value in case of loss, susceptibility to pilferage, etc.) and the rules of analogy are used. That is, like things (from a viewpoint of transportation characteristics) should take like prices (rates and class ratings). Any differences in class ratings should reflect differences in "likeness." Therefore, using the freight classification system, this concept of prohibition of general discrimination reflects the economic definition of price discrimination although marginal costs are not used. It is a completely workable system and reflects equity. Like things should be charged like prices.

Consequently, the transportation law on discrimination attempts to reflect both the general meaning of discrimination (no unequal treatment) as well as the economic/legal meaning of price discrimination (price differences must reflect only cost differences). But transportation discrimination law also covers more than just price (rates) and reflects the complexities of transportation.

IMPORTANCE OF THE COMMISSION ATTITUDE AND PHILOSOPHY

The Interstate Commerce Commission is charged with the responsibility of deciding what is "undue and unreasonable preference or prejudice" and to judge when personal discrimination exists under "substantially similar circumstances and conditions." A whole set of case law on each concept has developed over time but each complaint is taken up on a case-by-case basis. The ICC is charged with administering the law as set forth by Congress.

Given this power to administer the statute, the attitude of the Commission and its staff becomes important. If the Commission does not consider discrimination (either personal or general commodity/place discrimination) to be important, the decisions rendered will reflect that attitude. If the Commission decides that it will ignore the statutes, as seem to have been the case recently, relative to discrimination, no decisions will be rendered in spite of the statutes. Of course, Judicial review remains but as we all know, judicial review is time consuming and expensive. For day to day, month to month operations of the transportation system, it is the attitude and philosophy of the Commission that counts most.

RATES DISCOUNTING ALLOWABLE BUT PERSONAL DISCRIMINATION ILLEGAL

One of the interesting yet distressing occurrences since MCA 1980 has been rate discounting in the motor carrier industry. Some rate discounting was legally allowable under MCA 1980 within the limits of the zone of rate freedom (Sec. 11). Essentially, this allowed 10 percent plus or minus from the published tariff with an additional 5 percent at ICC discretion for two years. After 730 days, the limits of the zone of rate freedom were to be tied to the Producer Price Index. Rates could be varied within this zone without involving either antitrust law or transportation law on undue or unreasonable preference or prejudice. Rate discounting within prescribed limits is permissible but personal discrimination is still illegal and rate discounting in excess of the limits in the statute is unlawful if the net rate is destructively competitive.

DISCRIMINATION IN RATE DISCOUNTING

Since MCA 1980, tremendous amount of rate discounting in motor transportation has occurred. These discounts take many forms—the ICC found 22 different methods of discounting (Ex Parte MC-166, "Pricing Practices of Motor Carriers of Property Since the Motor Carrier Act of 1980," August 2, 1983) and I need not review the manner in which discounts are made. Suffice it to say that rate discounting has often exceeded the statute limits and there have been instances of up to 50 percent discounts from the published tariff offered selectively to certain shippers.

The carriers have requested that the ICC set rules on allowable rate discounts, but the Commission has declined to so do (No. 38728, "Lawfulness of Volume Discount Rates.—Motor Carrier," 365 I.C.C. 711, 1982). By avoiding the issue, the ICC has opened the door to deep rate discounting the excess of the statutory limit.

But more distressing is the apparent offering of rate discounts on an unequal basis. Here clearly personal discrimination is involved. Clearly discounts offered to one shipper but not another when similar circumstances and conditions exist involves personal discrimination.

Some large shippers find that they can get deep discounts which are not offered to other shippers of the same commodities offering equal or like quantities. This gives the large shipper an economic advantage and the small shipper an economic disadvantage. In effect, the transportation rate causes differences in economic treatment. It has been long standing doctrine that the ICC should not determine economic advantage. If the large shipper is more productive, it should win in the marketplace on the basis of its productivity, not on the basis of its bargaining power with the carrier. All shippers should be treated alike under similar circumstances and conditions. Simple equity calls for such an appproach—yet present rate discounting and lack of enforcement of the statute by the ICC allows just such unfair discrimination.

The upshot of rampart discrimination is pricing, plus lack of entry control plus lack of legally required rulemaking is leading to the "law of the jungle" in motor transportation. The shipper with economic clout wins deep discounts, the small shipper gets none. Carried far enough, this will ultimately destroy the transportation infrastructure of the U.S. There will be unstable conditions in carriers—a few big carriers and a multiplicity of small carriers most of which are either going bankrupt and exiting the industry or are new and giving poor service. The number of small carriers may remain fairly stable but the individual firms will come and go. This instability is much like the gasoline service stations were in the past—anyone

could pump gas and there was a service station on every corner (sometimes 4 on every corner), the operations of which changed frequently. In gasoline service stations, competition was so fierce that no one could stay in business for very long. In service stations, we have seen the trend to less stations (less competitors) but each pumping (as self serve) large quantities of gasoline and the large petroleum company-owned stations forcing out the small independent operator. This same thing is possible in trucking. Entry costs are low, especially for the truckload carrier, and operators can come and go. To stay in business, deep discounting is necessary. Since MCA 1980 there has been a tremendous growth of brokers who match loads for the multiplicity of small carriers in the truckload business and the large shippers and carriers. Instability prevails as small carriers (or owner-operators) come and go.

The result of discounting plus lack of entry control also affect the shipper. For the large shipper, there are too many carriers to deal with and too many price-service options to analyze. There is no assurance that unequal treatment in price and service is not taking place. The reaction of the large shipper is to reduce the number of carriers that he deals with and strike the best bargain as to price and service that he can (Gwendolyn H. Baker, "The Carrier Elimination Decision: Implications for Motor Carrier Marketing," Transportation Journal, Vol. 24, No. 1, Fall 1984, pp. 20–29). A second reaction of the large shipper is to start a private carriage operation and simply not deal with the common carrier at all or to move to the use of the secret rates of the contract carriage operations of common carriers. As an aside, under the present law and its administration, some of these private carriers can now be granted common and contract carrier certificates for their backhauls, thereby further increasing competition for the freight available. (R. Neil Southern and Martin T. Farris, "Federal Regulatory Policy Affecting Private Carrier Trucking," I.C.C. Practitioners' Journal, Vol. 49, No. 5, July-August 1982, pp. 503–529).

But small shippers don't have the option of private carriage. Also, small shippers aren't offered the rate discounts (in violation of the statute prohibiting personal discrimination) since his or her volume is small even though the small shipper may tender a like amount of freight in a single shipment. Small shippers lack enough economic clout to demand price and service options and sometimes the service is unreliable and sporadic as the carriers compete for the large shippers' business and serve the small shipper mainly as an afterthought. Those carriers who specialize in small shipments such as the express companies have seen their business boom since MCA 1980. For many small shippers, UPS, Federal Express, and Purolator are the only options available—even with their high rates. The result of all this is that the small shipper is placed at an economic disadvantage as compared to the large shipper possessing economic clout.

Lack of setting "the rules of the game" and enforcing the statutes relative to personal discrimination (and general discrimination beyond the limits provided in MCA 1980) is leading to extreme instability, some degree of carrier concentration, unequal treatment of shippers with the large shipper gaining economic advantage while the small shipper is at an economic disadvantage. And worst of all, inequality of treatment and rampant discrimination—all in contradiction to the aims of MCA 1980:

". . . in order to reduce the *uncertainty* felt by the nation's transportation industry, the Interstate Commerce Commission should be given *explicit direction* for regulation of the motor carrier industry and *well defined parameters* within which it may act pursuant to congressional policy . . . that legislative and resulting changes should be implemented with the *least amount of disruption* to the transportation system. . . .

"The appropriate authorizing committees of Congress shall conduct periodic oversight hearings . . . to ensure that this Act is being implemented according to congressional intent and purpose. (Italics added.)"

CONCLUSION

This Committee and this Hearing is the "appropriate authorizing committee" and the "well defined parameters with which it (the Commission) may act pursuant to Congressional policy" are clearly specified in MCA 1980. Clearly one of these parameters is the control over personal discrimination and undue or unreasonable preference or prejudice. Therefore, I strongly urge that Congress should see to it that the ICC follows the Congressional intent relative to price discounting and the resultant discrimination among shippers.

Thank you.

STATEMENT OF EDWARD S. PAULL, PRECISION STEEL WAREHOUSE, INC.

My name is Edward Paull, 3500 North Wolf Road, Franklin Park, Illinois 60131. I am the traffic manager for Precision Steel Warehouse, Inc., a steel service center with principal offices at Franklin Park, Illinois. Precision Steel Warehouse, Inc., is engaged in the sale and distribution of steel coil and sheet products. Its products are processed and distributed from facilities located at Franklin Park, Illinois and Charlotte, North Carolina. Raw materials are received at these plants from mills in the midwest and east and finished goods are shipped from our plants to over 2,000 destinations throughout the United States and Canada.

Motor carrier services are used for both inbound and outbound movements and virtually all outbound traffic moves on LTL class rates. I am responsible for all traffic and shipping functions at the Franklin Park, Illinois facility and have over 20 years' experience in the field. Almost 200 shipments per day originate at this facility. The majority move via motor common carrier at an average weight of 1100 pounds per shipment.

I am authorized to submit this statement on behalf of Precision Steel Warehouse, Inc., by Mr. David Hillstrom, President and Chief Executive Officer, and represent that it sets forth the official position of Precision Steel Warehouse, Inc.

My primary concern with the Motor Carrier Act of 1980 (MCA) is not with the MCA itself, but with the manner in which the provisions of the Act have been implemented by the ICC. In general, this legislation provided the groundwork for a sensible, practical overhaul of federal regulation of the surface transportation system as it relates to motor carriers. Unfortunately, the attitude and actions of the Interstate Commerce Commission have frustrated the intent of Congress. The Commission's refusal to enforce the clear provisions of the statute has created a closed and secret society benefitting the haves to the detriment of the have nots. In search for the lowest rate, even one knowledgeable in tariffs must encounter a confusing morass of discount tariffs which only the largest and most sophisticated shippers can well utilize. Small and moderate size shippers have been placed in a no-win position. We cannot afford to take equal advantage of the post MCA environment; yet, on the other hand, we cannot afford not to try. The results are that in 1985 only the largest shippers have been able to benefit from the MCA.

As traffic manager for Precision Steel, it is my responsibility not only to know that the correct rate is being assessed, but also to know whether or not PSW is being discriminated against. I am obliged to negotiate an equally advantageous rate for Precision Steel. We do not want to lose sales to customers because our competitors have a more favorable level of freight rates in effect on their traffic, i.e., we do not mind competing head on with larger competitors, but feel that we have a right to rely on the ICC to prevent rate discrimination. The ICC is not fulfilling its duty in this regard.

Prior to 1980, rates were readily accessible and equally available to all. We knew what we had to pay for transportation, what our competition paid, and that someone was responsible for seeing that these rates were reasonable, non-discriminatory, and preferential or prejudicial. That system worked, first because the MCA 1935 basically was a good law, and second, because the appointed Commissioners of the ICC essentially did a conscientious job in enforcing the law as it was written. Since enactment of MCS 1980, we have the same scenario unfolding: a basically good piece of legislation, but it is being twisted and manipulated by an agency that has little regard for the intent of Congress or the needs of the thousands of medium and small sized shippers.

There are several areas of concern to us, and I am sure to many other small and moderate size shippers who do not possess the clout of a Fortune 500 corporation or other national organization. We are deeply concerned about our cost of transportation because transportation charges are, on the average, 14 percent of final cost of our products. In some cases freight charges are as much as 20 percent of the cost of the product. Equally important is our need not to be the victim of discriminatory rates. The latter can have a substantial impact on our market patterns.

We also are concerned about the future, both with respect to rates, service and reliability of the motor carriers. As the number of LTL motor carriers continues to decline, we find it more difficult to obtain the service required at a reasonable price. What does the future hold for the small shipper when other good, reliable carriers like Motor Freight Express, ICX, Spector, Wilson, Tucker, Liberty, Interstate, Gordons, Gateway, TMX, Crouch, Overnite (IL), Sioux, Strickland, Time-DC, Scott, Briggs, Checker Express, Chief, Chippewa, Denver-Midwest, Dohrn, Eastern Express, ETMF, Glendening, IML, Mason-Dixon, Allard, Tobler, Indianhead, Badger, Blue Arrow, Rooks, Kains, KTS, and Jones Motor also go out of business? What will

our choices be? These are all carriers whom our company used to use on a regular basis. They were carriers who provided us with good service at reasonable rates. However, they have all gone out of business since the MCA '80. The thousands of new entrants into the trucking industry are not a factor in the hauling of LTL shipments. The remaining carriers have simply gotten larger.

During the past 5 years, in order to remain competitive, we have opened a facility in Charlotte, NC, and are presently selecting a site in the northeast (at a cost of approximately $2.5 million) so that we can maintain and, hopefully, increase our market share. We are also looking toward future facilities in the southwest and west if we wish to maintain and improve our markets. Because of the situation that the ICC has permitted, i.e., the discount rate mess, we cannot determine the extent to which freight rates are the cause of our marketing difficulties. We know that freight rates are a significant factor.

We are in an industry faced with a stark fact of life. Each year less steel is consumed than in the previous year. In spite of this, PSW has continued to grow. Since 1980, with respect to our principal facility at Franklin Park, Illinois, PSW has experienced an increase in both tons shipped and revenue. However, our marketing figures show that during the same 5-year period our marketing area has shrunk substantially. The number of customers within a 300-mile radius has grown from 73 percent to 83 percent. This occurred despite our efforts to reach a wider market by increased sales penetration in the more distant markets. We believe that the lack of proper enforcement by the ICC of the provisions against rate discrimination has been a significant cause of the shrinking market share in the more distant areas.

We believe that a part of our problem is that our competitors are getting larger discounts and, therefore, they have experienced a lesser increase in their rates. We can't, as a principal matter, verify it, because the ICC has permitted such discounts to either become hidden in the tariffs or not published at all, where contract carriage is involved.

I believe that if the ICC was doing its job, its staff of rate experts would see a red flag when carriers with operating ratios in the 90's publish a discount of say 40 or 50 percent. I am not a cost expert, but I believe the ICC should question the lawfulness of very large discounts being granted by carriers, particularly when operating ratios are high. The burden should fall on the Commission itself to protect the general public from unlawful rates. The law will not permit the rate bureaus to file protests; most medium and small shippers do not have the resources or the inclination to object to a lower rate; and in the real world the carriers dare not object for fear of retribution by the large discount shipper, i.e., loss of a customer.

What I am saying is that the larger discounts probably are not cost justified, but simply reflect the larger shipper's ability, because of its greater volume of freight, to exact a very large discount. To the extent that such discounts are not cost justified, my company and other similarly situated shippers lose out. This is because the base level of the rate structure is inflated, and even when coupled with a discount, we wind up paying higher total freight charges than we would if the ICC kept all discounts at a proper level.

Our studies indicate that the base rates on our average weighted shipment (1100 pounds) have increased 70 percent to 90 percent since 1980. In some cases, with respect to minimum charge shipments, the increases in the base charge are as high as 128 percent. Even with the prevailing 15 percent to 25 percent discount which PSW presently receives, our net increases in freight rates since 1980 are from 55 percent to 70 percent for our average weight shipment, and about 100 percent for our minimum charge shipments.

Even with all these rate increases many carriers have gone out of business, and the remainder do not seem to be any more profitable than they were before 1980. The increases are evidently justified as the rate bureaus submit voluminous evidential statements to justify the rate increases before they are approved by the ICC.

We also have a continuing concern over the cost of administering our traffic department, currently and in the future. Can we afford it? Historically, all shippers, large and small alike, depended on the class and commodity rate tariffs published by the rate bureaus for determining the legal rates to be charged by virtually all of the motor carriers. If we needed to check a rate or several rates to various points, we simply referred to our rather manageable file of bureau tariffs and possibly a few individual carrier tariffs. Our relatively small traffic department was capable of accomplishing this task reasonably well both as to accuracy and time expended. However, since the passage of the MCA 1980 and the advent of large scale discounting, there has been such an enormous proliferation of individual carrier tariffs that it is no longer economically or practically feasible to maintain in our company's li-

brary of motor carrier tariffs, all of the publications that we need and would like to have in our file.

The current inability to maintain a comprehensive tariff library means that I am unable to determine whether discriminatory rates are being published. By discriminatory I mean a lower rate applicable on the same commodity from and to the same points or for comparable distances. Even if I had access to, and was able to store, a complete up-to-date tariff file, and was able to employ all the additional personnel necessary to review such a volume of tariff matter, I could not verify whether or not a discriminatory rate was in effect because the ICC now permits carriers to hide rates in a number of ways. For example, the ICC permits carriers to publish several discount levels in the same tariff where a specific discount is made available to a specific shipper identified only by a code number known only to the carrier. Consequently, there is no way that my company can ascertain the amount of discount being enjoyed by our competitors. Similarly, in cases where our competitors are large enough, i.e., they have enough volume of freight to entice a motor carrier into using its contract carrier authority (the ICC has granted contract carrier authority to almost everyone), I can never ascertain what rates such competition may be enjoying because the ICC in Ex Parte No. MC-165, "Exemption of Motor Contract Carriers from Tariff Filing Requirements", has eliminated tariff filing requirements for all contract carriers. Our company, and I am sure there are thousands of others like ours, is not large enough and does not have the time, the personnel or the financial wherewithal to dedicate the kind of resources necessary to cope with the post MCA 1980 tariff complexity visited upon us by the policies of the ICC.

In our rather typical operation, I have 30-45 minutes to route 100-200 shipments each day. Time does not permit individual rate checks. I cannot make a study of these tariffs and determine which carrier is "usually" lower cost because each destination and weight is either different or the differences is not worth the time to check it. Smaller shippers are at even more of a disadvantage than we are. Many do not even employ transportation professionals. This function may be handled by a shop foreman or clerk with little if any knowledge of transportation. It may be a sideline for someone in purchasing or sales.

How could I justify to my company's management the need to expend our resources to compete in this environment? The first question asked of me would be "what is the payback?" I would have to honestly answer "there may be none." Yet to guard against the possibility of our being the victim of discriminatory pricing we must somehow make the effort to protect ourselves.

The ICC has completely abandoned its responsibility in this area. The shipper is now responsible for initiating a complaint. Of the hundreds of thousands of shippers and receivers in this country, how many do you really believe possess the expertise, manpower and resources to monitor all rates to determine if they, their competition and others are paying lawful rates? Someone must insure this, since the ICC no longer has any interest in protecting the general shipping public. Instead, the ICC's policy is to let the law of the jungle (marketplace) prevail. Ultimately this permits the rich to get richer, and the poor to get poorer.

CONCLUSION

In summary, I urge your committee to understand that the benefits promised of the MCA 1980 have not reached the medium and small shipper. Shippers like Precision Steel Warehouse are receiving discounts substantially below what the larger shippers enjoy. Our markets are shrinking. Yet we can't afford to search the thousands of pages of tariffs to know what our competitors are paying. Besides that, we would never know if they are using contract carriage—where common carriers can hide rates. It's either impossible for us to know or it is not worth the cost it would take to know. As much as we try to take advantage of more competition, we can't simply because the ICC has condoned this kind of rate activity.

In conclusion, I would ask your Committee to require the ICC to actively monitor, supervise and enforce the lawful rates, and tariff filing requirements contemplated by law, so that *all* shippers may easily determine the rates that are available to themselves and any other shipper. Thank you.

STATEMENT OF DONALD V. HARPER

My name is Donald V. Harper and I reside at 2451 N. Sheldon Street, St. Paul, Minnesota 55113. I am Professor of Transportation and Logistics in the School of Management, University of Minnesota, Minneapolis. I hold a Ph.D. degree in Economics from the University of Illinois, Urbana. I teach graduate and undergraduate

courses in transportation and logistics and have been actively engaged in research and consulting in the field of transportation for many years. I have written several books and monographs and numerous articles in the transportation field, including a widely used textbook on the United States domestic transportation system. I am licensed to practice before the Interstate Commerce Commission.

I am grateful for the opportunity to present my views on the impact of the Motor Carrier Act of 1980 to the Committee. The purpose of my statment is to discuss some of the major unresolved issues that have developed as a result of the enactment of the law. These issues are (1) financial instability in the regulated interstate for-hire motor trucking industry, (2) the growth of unjust discrimination in motor trucking company rates, (3) the deterioration of the traditional common carrier obligations and the erosion of common carriage in the transportation industries, (4) the future of collective pricing in the interstate motor trucking industry, (5) the question of interpretation of the Act by the Interstate Commerce Commission (ICC), and (6) several miscellaneous issues.

INDUSTRY DEVELOPMENTS SINCE 1980

The Motor Carrier Act of 1980 was passed after the ICC had already, since 1978, reinterpreted the Motor Carrier Act of 1935 in such a way that it has begun to relax entry, rate, and other aspects of regulation. Although the Act of 1980 provided for a fairly substantial regulatory structure, the Commission continued to follow a pro-deregulation policy after the new law was enacted and has permitted entry to become virtually wide open and has exercised only minimal authority in regulating motor trucking company rates. The above applies to all segments of the interstate motor trucking industry, although its impact has been somewhat different for different segments.

Because of the entry control policy followed by the Commission, many pre-existing carriers greatly expanded their route systems and numerous new carriers entered the industry. The number of interstate motor trucking companies regulated by the ICC has grown dramatically since 1979.

At the same time the ICC has been willing to accept most rates filed by the regulated carriers without question, giving the carriers considerable pricing freedom. Many of the rates since 1980 have been so-called "discount" rates of various kinds that carriers offer in response to the competitive pressure that has been upon them.

Unfortunately, the reform of economic regulation occurred simultaneously with serious recession in the country and the industry. The two forces—reformed regulation with its greater supply of service, increased competition, and freedom to set rates, along with a poor economy with less traffic available for a greater supply to carry—led to disaster for the industry. The financial troubles of the industry, including numerous bankruptcies, have been well documented and presented in previous over sign hearings. As a brief reference to what has happened recently, Tables 1 through 4 contain some information about economic indicators, total truck traffic carried, and the performance of one segment of the regulated interstate motor trucking industry—a group of Classes I and II Regular Route Common Carriers—that may be taken as being representative of the entire industry.

Table 1 contains data on the country's annual gross national product, unemployment rate, and industrial production for the years 1978 through 1984. The data show the decline in the economy between 1979 and 1982 and the recovery since then. In 1984, the gross national product grew by 6.8 per cent, unemployment fell to 7.4 per cent, and the index of industrial production increased from 147.6 to 163.5.

Tables 2 and 3 contain information on the total ton-miles and tons carried by intercity private and for-hire trucks in the 1978–1984 period. The pattern shown is similar to that of the economic indicators in Table 1—there was decline in the 1979–1982 period and recovery in 1983 and 1984.

However, the for-hire interstate trucking industry has not enjoyed recovery to the same degree as the economy in general and, in fact, 1984 was a year of financial decline. The financial statistics for a sample of Classes I and II Regular Route Common Carriers regulated by the Commission shown in Table 4, while showing deterioration in the 1979–1982 period and improvement in 1983, show further deterioration in 1984, even though the economy in general, as shown by the economic indicators in Table 1, continued to show improvement. Thus, their operation income fell 12.3 per cent and net income declined 12.0 per cent in 1984. The first quarter of 1985 was a period of further decline for these carriers, when compared with the first quarter of 1984.

Large as well as small carriers experienced these difficulties in 1984. The ICC reported that the 100 largest common carrier motor trucking companies under its ju-

risdiction enjoyed a 7.1 per cent increase in tons carried in 1984 and their revenues increased 12.5 per cent, but operating income declined 2.9 per cent and net income was down 4.3 per cent.[1]

TABLE 1.—ECONOMIC INDICATORS, U.S. ECONOMY 1978–84

	1978	1979	1980	1981	1982	1983	1984
Percent change in GNP compared with previous year (GNP in constant 1972 dollars)	+5.0	+2.8	−0.3	+2.5	−2.1	+3.7	[1] +6.8
Unemployment rate (all workers) (percent)	6.0	5.8	7.0	7.5	9.5	9.5	7.4
Index of industrial production (1967–100)	146.1	152.5	147.0	151.0	138.6	147.6	[1] 163.5

[1] Preliminary.

Source: Economic Report of the President, Transmitted to the Congress, February, 1985 and The Annual Report of the Council of Economic Advisers (Washington, DC: U.S. Government Printing Office, 1985).

TABLE 2.—DOMESTIC INTERCITY TON-MILES CARRIED BY MOTOR TRUCK, 1978–84 [1]

[In millions]

Year	Ton-miles	Percent change
1978	599	+7.9
1979	608	+1.5
1980	555	−8.7
1981	527	−5.0
1982	520	−1.3
1983	548	+5.4
1984	602	+9.9

[1] Includes both private and for-hire carriers.

Source: Transportation Policy Associates, "Transportation in America: A Statistical Analysis of Transportation in the United States" (Washington, DC: Transportation Policy Associates, March and July, 1985), p. 6.

TABLE 3.—DOMESTIC INTERCITY TONNAGE CARRIED BY MOTOR TRUCK, 1978–84 [1]

[In millions]

Year	Tons	Percent change
1978	2,260	+5.5
1979	2,240	−0.8
1980	2,007	−10.4
1981	1,964	−2.1
1982	1,791	−8.8
1983	1,894	+5.8
1984	2,072	+9.4

[1] Includes both private and for-hire carriers.

Source: Transportation Policy Associates, "Transportation in America: A Statistical Analysis of Transportation in the United States" (Washington, DC: Transportation Policy Associates, March and July, 1985), p. 7.

[1] Interstate Commerce Commission, Bureau of Accounts, *Large Class I Motor Carriers of Property Selected Earnings Data* (Washington, D.C.: Bureau of Accounts, June, 1985).

TABLE 4.—SELECTED PERFORMANCE INDICATORS OF REGULATED INTERSTATE CLASSES I AND II,[1] INTERCITY REGULAR ROUTE COMMON CARRIERS OF GENERAL FREIGHT,[2] 1978–84

[In thousands]

	1978	Percent change	1979	Percent change	1980	Percent change	1981	Percent change	1982	Percent change	1983	Percent change	1984	Percent change
Operating revenue	12,662.4	+13.8	14,026.8	+10.8	13,811.6	−15.3	14,655.2	+6.1	12,910.3	−11.9	13,149.6	+1.9	13,660.5	3.9
Operating income [3]	704.2	+9.1	475.2	−32.5	501.6	+5.6	330.9	−34.0	64.2	−80.4	532.0	+728.9	466.7	−12.3
After tax net income [4]	387.1	11.1	258.5	−31.2	250.4	−3.1	264.5	+5.6	−22.7	−108.6	276.8	+132.2	243.5	−12.0
Tons carried	176.9	+3.4	170.3	−3.8	136.4	−19.9	131.5	−3.6	105.5	−19.8	100.7	−4.5	100.8	0.0

[1] Classes I and II carriers are those with annual operating revenue of $1,000,000 or more (1983 definition).
[2] 161 carriers that have been studied since 1973.
[3] Operating income-operating revenue less operating expenses.
[4] The write-off of the book value of ICC issued operating authorities taken by ICC regulated carriers as a result of the Motor Carrier Act of 1980 is not shown here as a deduction from net income.

Source: Based on information provided in Economic Research Committee, Regular Route Common Carrier Conference, American Trucking Associations, "Quarterly Operating Results of the Motor Carriers of General Freight, Fourth Quarter, 1984" (Washington, DC: Regular Common Carrier Conference, American Trucking Associations, 1985).

The financial problems of these and other segments of the interstate motor trucking industry in recent years have had an impact on the suppliers to the industry, including truck manufacturers, tire manufacturers, and others. For example, factory sales to the United States market of diesel trucks with gross vehicle weight of 19,000 pounds or more fell from 195,000 units in 1979 to 102,000 in 1982, the worst of the recent bad years in the trucking industry.[2] Factory shipments to the United States market of new original equipment tires of the kind used on over-the-road trucks declined from 4.3 million units in 1979 to only 2.0 million units in 1982. Factory shipments of replacement tires of that size fell from 12.3 million units in 1979 to 9.5 million units in 1982.[3] It is clear that the economic difficulties of an important industry such as interstate motor trucking have a much broader negative impact on the economy than just the impact on that industry itself and its customers.

It may be concluded that the regulated interstate trucking industry is still financially weak because of the reform in federal economic regulation. A stronger economy, although having helped to some degree, has not solved the problem.

At the same time, the United States railroad industry in 1984 carried the second largest number of ton-miles in its history and its ordinary income rose by almost 50 per cent over 1983.[4]

ISSUES TO BE RESOLVED

There are a number of issues involving the regulated interstate motor trucking industry that need to be resolved in order to insure an adequate for-hire motor truck transportation system for the country. Several of these are discussed below.

(1) The most serious issue is the continued financial distress of the industry. Although less serious than it was at the depth of the recession in 1982, the industry is still in economic trouble caused mainly by oversupply of service.

Some reregulation, particularly in the area of entry control, would serve to make the industry stronger financially and hence better able to serve the public. Further reduction of what economic regulation still exists, either by administrative action of the ICC or by legislation, would make a bad situation worse. Continuance of the present regulatory policy would mean continuance of the instability and financial distress in the industry.

(2) A second issue is the apparent growth in unjust rate discrimination in the regulated interstate motor trucking industry. Although the law still prohibits unjust or unreasonable discrimination in rates, which in the past was interpreted to include providing different rates to two or more shippers under the same circumstances (same commodity, size of shipment, origin and destination points, etc.), such pricing has been taking place, the result of the intense competition among the regulated carriers and "discounting" for certain customers and the lack of interest by the Commission in preventing it. Because the lower rates in such situations usually go to the larger shipper, such discrimination makes it difficult for smaller shippers to compete and, in extreme cases, can lead to monopoly in an area or in an industry. This problem is made worse by the fact that large shippers are also benefitting from low rates provided by contract motor carriers whose rates, by ICC decision, are no longer required to be filed with the Commission and, therefore, are unknown to competing carriers and shippers. Further, large shippers benefit from contract rail rates, which are low rates (also secret) offered as part of a long term contract between a shipper and a railroad. Railroads are generally not interested in entering into such contracts with small-volume shippers. Unjust rate discrimination in the trucking industry could be curbed by the ICC enforcing the law as it now exists. New legislation is not required.

(3) The third issue has to do with the obligations of common carriers to their customers on the status of common carriage in the United States. One of the costs of regulatory reform in highway, railroad, and air transportation has been the deterioration of the common carrier obligations to the public. Common carriers have traditionally been expected to serve the public generally without discrimination (all shippers who offered traffic that was within the carrier's normal "holding out" in terms of origin and destination points and commodities to be carried were to be served) and to deliver in good condition and to compensate for loss and damage should it occur. However, these obligations can be enforced effectively only if there is a regu-

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[2] Motor Vehicle Manufacturers Association, "MVMA Motor Vehicle Facts and Figures, 1984" (Detroit: Motor Vehicle Manufacturers Association, 1984), p. 11.

[3] Modern Tire Dealer (New York: Bill Publications), various issues.

[4] Association of American Railroads.

latory system of some kind in place to provide penalties or the threat of penalties for lack of performance. Commission policy has allowed common carrier motor trucking companies to refuse to provide the full service authorized in their operating certificates and some railroads to reduce their liability for loss and damage in certain situations. And airlines immediately reduced their liability for loss and damage when the 1977 legislation to deregulate air freight traffic was enacted. Without the traditional common carrier obligations, the shipping public is no longer guaranteed the availability of for-hire common carrier service and, when service is available, that the carriers will provide adequate protection against loss and damage.

Related to this is the potential growth of private carriage in the trucking industry. The decisions of the ICC relative to mixed private and for-hire service and other matters and the provision in the Motor Carrier Act of 1980 relative to compensated intercorporate hauling encourage private carriage at the expense of common carrier. In addition, Commission policy has encouraged the growth of motor contract carriage, often at the expense of common carrier, and the rapid growth of railroad contract carriage has reduced the role of railroads as common carriers and has diverted rail equipment and personnel away from common carriage.

The chief victim of the erosion of common carriage and common carrier obligations is the small shipper who has little bargaining power with carriers, whose traffic is not as "desirable" to the carriers as that of larger shippers, and who cannot practically enter into private carriage for financial or other reasons. Any further deregulation of the motor trucking industry would make the situation worse and Congress should consider reregulation of some sort in this area.

(4) The fourth issue is the future of collective pricing in the interstate motor trucking industry. It is claimed that collective pricing in the trucking industry can lead to certain negative consequences including high rates, conscious unjust discrimination against certain shippers, lack of incentive for efficiency, and so on, because it is not "competitive."

However, the procedures followed by motor trucking rate bureaus serve to prevent rate abuses from occurring, particularly since the Act of 1980 required some changes in those procedures. The openness of the process and the fact that both shippers and carriers participate serve to prevent excessively high rates and unjust discrimination. Further, the rates determined by rate bureaus are subject to review by the ICC, which can protect against rate abuses.

As to the question of competition, rate bureaus do not control all motor truck service and rates available to the public and there can be considerable rate and service competition. Thus, rate bureau members have the right of independent action through the rate bureau process and, in addition, may publish rates outside the rate bureau mechanism entirely. And competition among rate bureau members is not based on price alone; carriers compete also on a service basis (speed, reliability, and so on). There is also a good deal of competition faced by rate bureau members from non-members, including for-hire common motor carriers that are not members of the bureau, from for-hire contract motor carriers, from private trucking, and from other modes of transportation. Finally, there is competition between different substitutable commodities and competition between different routes in the same markets. Therefore, the fact that there is collective pricing among rate bureau members does not mean that there is no competition in the provision of transportation service. Quite to the contrary, there can still be considerable competition and is evidenced by the intense competition that prevails in the industry today.

At the same time, there are numerous important positive effects of collective ratemaking that have been presented in previous Congressional hearings, including avoidance of destructive pricing, a stable rate system, the avoidance of unjust price discrimination, providing a mechanism for the establishment of joint rates, the preservation of common carrier obligations to the public, the provision of information to both shippers and carriers which helps them to compete, reduction in administrative costs for shippers and carriers which is of particular importance to small firms, and so on. It is unlikely that any alternative pricing mechanism can provide these benefits.

The advantages of collective pricing have been increasingly recognized and the critics of collective pricing have been unable to convince those in a position to abolish the practice that such a step should be taken. Congress has not embraced the 1983 recommendation of the Motor Carrier Ratemaking Study Commission to abolish collective ratemaking, in 1984 the ICC dropped its deliberations on whether or

not to eliminate collectively established rates on small shipments,[5] and in 1985 the U.S. Supreme Court upheld the anti trust immunity for intrastate collective ratemaking in the Southern Motor Carriers Conference case.[6]

It would not be in the interest of the motor trucking industry, its customers, or the general public to do away with collective pricing in the industry.

(5) The fifth issue is that of the relationship between Congress and the independent regulatory agencies, in particular the ICC. The Motor Carrier Act of 1980, although it reduced economic regulation of the motor trucking industry, provided for a fairly substantial regulatory structure. However, the Commission, in administering the law, has interpreted it in such a way as to provide a greater degree of reform than was probably intended by Congress. The result—almost totally open entry and considerable freedom to set rates without interference by the ICC—has been the primary cause of the financial troubles of the industry today and the other problems discussed in this statement.

In my opinion, the Commission has not interpreted the Act in the way intended by Congress. The apparent purpose of the ICC is to carry out the policies of the current federal administration. The result is that economic regulation has become an instrument of administration political policy, and it has lost the objectivity and impartial character that it maintained for so many years prior to 1978. I believe that Congress should take corrective action to insure that, in the future, the Commission implements the Motor Carrier Act of 1980 as it was intended by Congress.

(6) Other issues that exist but which are not discussed further here are the wasteful use of energy caused by over-capacity in the trucking industry and its numerous empty and partially filled truck trips, the added air and noise pollution caused by an excessive number of motor trucking vehicles on the country's roads, increased wear and tear on the nation's highways, an apparent increase in safety problems among interstate trucking companies, continued confusion over what is regulated and what is not under the various exemptions found in the law, the continued high failure and turnover rate among owner-operators, and the general uncertainty about the future extent of and form of economic regulation of the industry.

CONCLUSIONS

I have attempted to briefly describe some of the current unresolved issues related to federal economic regulation of the interstate for-hire motor trucking industry. The policies followed by the ICC in interpreting the Motor Carrier Act of 1980 have contributed greatly to the financial problems of the industry and a growth of unjust discrimination in rates. Regulatory reform in motor trucking and in other modes has caused a deterioration of the common carrier obligations of the regulated carriers and an erosion of common carriage with potentially negative consequences for the small shipper. Other issues that can be tied to the Act of 1980 have to do with energy consumption, air and noise pollution, highway wear and tear, increased safety problems, confusion over what is regulated and what is not, the economic condition of owner-operators, and uncertainty about the future of federal economic regulation.

These problems would be made more serious if further deregulation by statute were enacted and/or the ICC deregulated further via administrative action. On the other hand, they could be solved, at least in part, if Congress were to reregulate by statute to some degree and/or require the Commission to adhere to the intentions of the Act of 1980.

Collective pricing in motor trucking remains a controversial issue and it is important to recognize the numerous positive benefits of collective ratemaking for shippers, carriers, and the general public.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

1. The ICC should enforce the Act of 1980 as I believe it was intended by Congress. This would mean that the Commission would establish a real test of "Public need" for common carrier entry and would apply the rate provisions of the Act as they are written, rather than accepting practically any rate that is filed by the car-

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[5] Interstate Commerce Commission, Ex Parte No. 172, "Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments," Nov. 27, 1984.

[6] *Southern Motor Carriers Conference, et al.* v. *United States*, No. 82-1922, March 27, 1985.

riers. The carriers would gain relief from the instability that has been brought about by the ICC policies of the past few years and the shipping public would gain the benefits of increased competition and more pricing freedom that were intended by Congress without the chaos of practically wide open entry and pricing.

2. The ICC should merely enforce what the law provides for (unreasonable rate discrimination is illegal) by carefully reviewing rate proposals as they are filed and by prohibiting rates filed for the benefit of single shippers only—common carrier rates should be available to all on a non-discriminatory basis. This is especially needed since the Robinson-Patman Act, the country's basic price discrimination statute, does not apply to services and, thus, unreasonable rate discrimination in the motor trucking industry is not guarded against by anyone in the federal government if the ICC refuses to do its part.

3. Studies have shown that the common carrier obligation relative to who was and was not served by common carriers was not adequately enforced by the ICC prior to 1980. However, the Commission was on record as supporting the common carrier concept and the obligation was adhered to by most carriers most of the time because of the threat of enforcement and the possible penalties for non-observance. Also, regulated carriers were expected to provide the service provided for in their operating authority, unlike the situation today. The result was that shippers were generally protected and were satisfied with the situation. The obligation relative to loss and damage liability worked very well before regulatory reform.

4. There is no conflict. I said in my statement that the ICC *can* act as a guardian against abuses by rate bureaus. I also said that the Commission has not been doing a lot in the rate regulation area in recent years. The point is, if the ICC did use the authority it has, it could act to prevent abuses by the bureaus.

5. The role of rate bureaus in common carrier obligations has to do mainly with the informational role they play. Shippers and carriers alike benefit from the fact that rate bureaus make known who their members are and the rates that bureau members are charging for one and all to see, information that shippers would otherwise have to dig our for themselves. For the small shipper, that could be a non-affordable activity, leaving the small shipper susceptible to choosing unreliable carriers and being charged unjustly discriminatory rates. Rate bureaus discourage unreasonable rate discrimination in the motor trucking industry, and avoidance of such discrimination is a common carrier obligation.

Another obligation of common carriers is to charge rates that are reasonable. The openness of rate bureau proceedings and the fact that both shippers and carriers participate, mean that rates arrived at may have a better chance of being reasonable to all than rates arrived at as individual carrier decisions. Lastly, rate bureau members commit themselves to serve and to charge the rates provided for in bureau tariffs, thus, in effect, declaring themselves willing to fulfill their common carrier obligations.

6. The Motor Carrier Act of 1980 addressed a problem that needed correcting in that entry was not open enough over some routes and for some commodities, and entry control was too specific, particularly in the general commodity, less-than-truckload segment of the industry, and rate regulation needed to be relaxed to some degree. The law is well written, well structured, comprehensive, workable. It provides reform and yet does not destroy the regulatory system altogether. It also provides for needed oversight. The problem with the Act of 1980 is the way it has been administered by the ICC, as indicated in my previous written statement.

Statement of Jackie Presser, General President, International Brotherhood of Teamsters

Mr. Chairman and Committee Members, the International Brotherhood of Teamsters deeply appreciates the opportunity afforded to our Organization once again to set forth our views on the Motor Carrier Act of 1980 and the effect it has had on IBT members, the trucking industry, and the public at large.

Let me state at the outset that the Congressional intent of the compromise language embodied in the Motor Carrier Act of 1980 was to foster "competitive and efficient" transportation. This has not been achieved. Mr. Chairman, as you are aware the Act has never been responsibly and earnestly carried out because of lack of enforcement by the Interstate Commerce Commission.

Mr. Chairman, the human suffering which we have recounted to this Committee time and again continues. As a union leader, I do not share the luxury of economists and bureaucrats who deal with this issue only on paper. I see the faces and hear the voices of unemployed workers every day.

I continue to hear the desperate pleas for help and stories of family tragedy from laid-off workers who merely ask for the opportunity to make a decent living for themselves and their children. They are not looking for government handouts. They are hard-working men and women who built the United States trucking industry into the finest transportation system in the world—a system which has been ravaged by misguided federal policies.

Mr. Chairman. the tragedy of unemployment has been pushed off the front pages by stories on deficit reduction, tax reform and trade policy. These are important issues, of course, but there should be no higher priority for this Congress than to relieve the suffering of needless unemployment caused by truck deregulation.

I am talking about people for whom the safety net has collapsed. Their unemployment benefits have been exhausted and their health benefits have run out. In some cases, members have lost their entire pensions because their company has gone bankrupt.

Mr. Chairman, where do you go when doctors and hospitals refuse to treat you or your children because you can't pay their fees? What do you do when you lose everything you've worked for because of the costs of a catastrophic illness?

This is the human story behind trucking deregulation. They are my members and your constituents. Together, you and I have a joint solemn responsibility to help them.

The demoralizing effects of unemployment are incalculable. We are in danger of permanently scarring an entire generation of trucking industry workers who are losing faith in America, and quite frankly, in this Congress. They are well aware of these oversight hearings, Mr. Chairman, and they know how many times this Committee has listened to their story and refused to act.

It is not too late to help these people. We have the tools necessary to remedy this situation, all we seem to be lacking is the will.

TRUCKING INDUSTRY TODAY

The trucking industry, as the Teamsters Union has maintained before Congress on four previous occasions, is in complete and total disarray. It has absolutely no resemblance to the prederegulated industry! We are realists; the current situation is not solely the blame of the Motor Carrier Act of 1980. The blame also lies with the irresponsible interpretation and implementation of the Act by the Interstate Commerce Commission. First, the I.C.C.'s policies of open entry and over-extended grants of operating authority have set in motion processes which have glutted shrinking transportation markets. The act, as written, calls for the relaxation of entry requirements for carriers by eliminating many of the prior restrictions placed on operators. Its language cannot be construed as an elimination of entry standards. Carriers are still required to demonstrate that they were "fit, willing and able" to perform the proposed service and that they would serve a public need. the Commission, in iplementing the Act, has taken it upon its left to abandon long-standing public need and fitness tests. They, instead, approved nearly 95 percent of all appllications for new entry, and in many cases, grant extended authority beyond the carrier's orginal request. The Commission' lackadaisical attitued toward market entry means virtually anyone can enter the trucking industry without restrictions. The dramatic increase in the number of motor carriers has lead to a problematic overcapacity in the industry where natural output and demand for transportation servvices have declined sharply.

The Teamsters Union strongly believes that this tremendous increase in new entries, while tonnage and service decreases, can only serve as a long-term detriment to the trucking industry. The Motor Carrier Act was enacted to promote competition in service and price between carriers. we know competition in an industry is healthy. However, the Commission's white card approval of all entry applications undermines the intent of the Act, and has forced carriers to contend with cutthroat competition just to maintain a small portion of their market shares.

To further confound this lack of implementation, the ICC's increased practice of rubber stamp approvals for blanket operating authority has brought the number of carriers from 17,000 before deregulation to over 40,000 in 1985. Simultaneously, over 50% of top Class I and II carriers have operating ratios of 100.0 or higher, and include 60 major bankruptcies with job losses of over 77,160 jobs. It is irresponsible to continue allowing carrier entry when the market cannot sustain the existing carriers. Concrete statistics prove this fact! Mr. Norman Weintraub, IBT Chief economist has prepared an extensive financial overview for this Committee to buttress the IBT conclusions. I sincerely hope the Committee and staff members will take the time to objectively review Mr. Weintraub's comprehensive report.

Mr. Chairman, as you know, the Teamsters Union has informed the Senate and U.S. House Committees on four separate occasions as to the disastrous consequences of the deregulated cutthroat environment not only for employees and the industry, but also for the American public.

Many early advocates of trucking deregulation are no longer as vocal or enthusiastic about the long-term benefits of deregulation which were laid before the feet of the American public. Despite the distorted claims of success stories that this Committee may hear from the Interstate Commerce Commission, certain members of the Department of Transportation and Office of Management and Budget and other deregulation advocates, the Teamsters Union maintains the opposite is the result. I hope this Committee will inquire of its witnesses such questions as: What has happended to all the promised benefits to consumers and shippers? Where are the success stories of new and more efficient carriers? Where is the increased service to rural America? Where is the increased orders for trucks, trailers and parts? Where are the safer highway conditions?

SAFETY

Mr. Chairman, the International Brotherhood of Teamsters sees first-hand the horror stories involving accidents on our nation's highways. We believe and the evidence shows these tragedies are a direct result of deregulation. The I.C.C., by turning its head on entry provisions, has allowed anyone to operate on our nation's highways regardless of their ability to operate safely or legally. The increased numnber of Mom & Pop type entrants has caused this cutthroat competition. This competition may be seen as healthy and beneficial by cloistered academics and bureaucrats. However, in the real world where my members must survive, we see daily the economic incentive to violate safety insurance requirements. Drivers, in order to compete effectively, must operate longer hours, at higher rates of speed, under greater tension, and in less safe equipment. There is no doubt that this has raised the number of terrible accidents on our highways, risking not just truckers' lives, but also the general public. We don't have to remind you or anyone else in this room of the disasters that have occurred on the Washington beltway—forcing Maryland and Virginia to take the unprecedented action of prohibiting tractor trailers from using the high speed lane.

Anyone of us can examine the fluffed reports from various government agencies that purport safety is alive and well and the motoring public remains safe. However, one needs only drive any of this nation's interstate highways to see the proliferation of unsafe vehicles—or for lack of a better term, unguided missiles. Mr. Chairman, at this point, I would like to submit for the record the August 13th editorial from the New York Times which examines this problem. With much of the industry facing economic disaster, safety and maintenance of equipment is a low-priority item. With only 100 federal highway inspectors to monitor the over 5 million trucks, the real enforcement of highway safety has been the safety clauses agreed to between the union and organized carriers in the Teamsters' National Master Freight Agreement. Since the loss of these unionized carriers, we have seen an indisiptable downturn in safety. With the limited resources and manpower of federal agencies, all efforts are directed at the large established carriers that have historically maintained their safety fitness as a result of the National Master Freight Agreement. It is no wonder that to show any safety enforcement by the federal government, these agencies can only audit and monitor these carriers instead of chasing the fly-by-night, Mom & Pop carriers.

WITHDRAWAL LIABILITY

Mr. Chairman, deregulation, and its resulting proliferation of motor carrier bankruptcies has seriously affected the pensions of thousands of our members. Deregulation and the lower levels of freight have placed a number of trucking companies in jeopardy of future bankruptcy. Many companies are on the horns of a dilemma of either filing for bankruptcy or having to pay their withdrawal liability for their employees' pensions. Deregulation has spawned this problem. The more than 200 Teamster multi-employer pension and health & welfare plans have worked with a number of trucking companies in searching for innovative ways to assist these companies with their financial problems. We are examining different studies on the problem of withdrawal liability in the trucking industry. However, we have not agreed to any of the so-called reform packages circulating in Washington. I call your attention to the attached letter I sent to the Chairman of the labor committees of the House and Senate regarding future ERISA legislation. The Teamsters union

contends that deregulation has spawned these and many more near bankruptcies, and that without deregulation withdrawal liability would not be an issue.

INSURANCE LIABILITY

After five years of rulemaking delay at the Department of Transportation, new minimum levels of truck liability insurance coverage became effective on January 1, 1985. These higher standards were authorized by Congress in 1980.

Already, we have read reports of efforts to reduce the mandated levels of insurance. The International Brotherhood of Teamsters believes that these liability standards must be maintained. While we may agree with some complaints by motor carriers with good safety records who are faced with enormous increases in premiums for these new higher insurance levels, we believe that all motor carriers should be required to possess the needed insurance coverage-without exception.

Again, Mr. Chairman, we feel that deregulation has forced good, safe motor carriers out of business and those who obtained operating authority to fill that vacuum cannot afford to maintain their equipment properly or pay for these higher insurance levels. With the added disregard for highway safety, there is a greater need for all motor carriers to possess this insurance.

NATIONAL DEFENSE

The silent and unspoken condemnation of the current state of the trucking industry comes from our national defense experts. I need not tell you that this country's highway system, complemented by our trucking industry, at one time was considered the backbone of this country's national defense. Today, concerns are legitimately raised as to our preparedness in the event of emergency. Our highway system, maintained in the interest of defense, stands ready for such transport needs. This nation's trucking industry however, is in a State of confusion and would certainly not be able to meet the needs of a defense emergency. Nor could the railroads be used as a substitute because of their disastrous condition. Nothing is more critical than our national defense, and the issue here is a fundamental responsibility of the federal government.

RECOMMENDATIONS

The IBT strongly recommends the following Congressional action:

1. Congress should conduct an oversight investigation into what standards and criteria the I.C.C. applies in granting new entry operating authority to all motor carriers since the enactment of the Motor Carrier Act of 1980. After the findings of such, Congress should act on legislation to correct this situation.

2. Congress should conduct a study and review of the need for Class III motor carriers to make reports to the I.C.C. In addition, the Congress should investigate the number of accidents and safety violations of Class III motor carriers. Congress should investigate Class III owners, i.e., owner operators' safety records, and compliance with federal insurance regulations.

3. Congress should fund the proper staff levels at the I.C.C. to enable effective administration of the Motor Carrier Act. This funding should be earmarked for upgrading enforcement, which is an absolute necessity if the goals of the Act are to be realized.

4. Congress should authorize an independent investigation of the effect of deregulation on employees, families, local communities and the general public. This study should also examine the financial status and lifestyles of owners and owner-operators under the Motor Carrier Act.

5. Congress should direct the Federal Emergency Management Agency to study the ability of the various transportation modes to serve the nation's national defense needs. Specifically, the study should examine the condition, and reliability of present equipment in providing for the nation's needs.

6. Congress should provide sufficient appropriations of funds to the Jobs Referral Bank at the Department of Labor, as required by Section 35 of the Motor Carrier Act.

7. Congress should appropriate sufficient funds for effective highway safety, which must include an increase of staff at the Bureau of Motor Carrier safety to conduct safety investigations of carriers who received operating authority after enactment of the Motor Carrier Act.

STATEMENT OF INSTRUMENTATION NORTHWEST, INC.

My name is Keith I. McManus, 14972 NE 31st Circle, Redmond WA 98052. I am Traffic Manager of Instrumentation Northwest with principal offices at Redmond, WA.

Instrumentation Northwest is engaged in the sale and distribution of Ground Water Monitoring Equipment and Supplies. Its products are processed and distributed from plants located at Redmond, WA.

Motor carrier services are used for both the inbound and outbound movements and virtually all outbound traffic moves LTL class rates. From 1 to 8 shipments per day originate at this facility. I am responsible for all traffic and shipping functions at the Redmond facility and have over 2½ years experience in traffic and shipping.

I am authorized to submit this statement on behalf of Instrumentation Northwest, Inc., 14972 NE 31st Circle, Redmond, WA 98052.

It is our opinion that the full impact of the loss of antitrust immunity for collective ratemaking will be felt by small and medium size businesses such as ours. The loss of collective ratemaking will result in greatly increased cost to our firm, which means increased costs to the consumer. There would also be a reduction in competition among carriers serving smaller shippers.

In formulating their recommendations the Congress, the Motor Carrier Ratemaking Study Commission did not serve the interest of the general public for two reasons. First of all, the makeup of the Commission predetermined its conclusions. The two "shipper" members were representing the interests of the large corporations and favored total deregulation. The only interest not represented was that of the Traffic Manager actively involved in the day to day task of moving this nations goods.

Much LTL Freight is generated by small or medium size businesses and the receivers are of similar size. Responsibility for the traffic function in these firms varies greatly. In many smaller businesses, the responsibility rests with a shipping foreman or clerk with little detailed knowledge of the traffic function.

With the recent realization that transportation costs are a significant part of the total price of a product, more business are looking at their shipping/traffic function with a new perspective. Publicity surrounding the Motor Carrier Act of 1980 has made top management of many small firms attach a new found importance to the transportation of their goods and the effects of its cost and service in their business.

No reasonable person is suggesting that LTL class rates be permanent. As one of the many thousands of small shippers in this country, Instrumentation Northwest only asks that Motor carriers be allowed to set and publish rates collectively which are reasonable and uniform for like commodities and are published for all shippers to see.

In promoting the deregulation of the Motor Carrier Industry, advocated of the removal of antitrust immunity for collective ratemaking offer many theories in the same vein; admirable but impractical for all but large corporations and textbook transportation experts.

Another serious concern of Instrumentation Northwest is the avalanche of predatory rates which have forced smaller carriers out of business and leave shippers at the mercy of the large survivors of the industry. The beginning of this can be seen in the "Discount-Mania" in the industry today. Giving away 10, 20, or even 50% of the revenue on shipments can only result in financial disaster for all but the largest of carriers. A concern we would like to put forth is the illegal rebates now afforded the largest shippers. This condition exists today. It has been sanctioned by the Interstate Commerce Commission by allowing carriers to refund monies to someone other than the party bearing the freight charges. Outright kickbacks are becoming a fact of life.

The outlook for motor transportation in this country and the public it serves would be bright indeed if the energy being directed to dismantling our present system without a reasonable replacement were directed toward a step by step improvement with full consideration of the consequences to all shippers. It is our hope that in your deliberations you will keep in mind the needs and concerns of Instrumentation Northwest, Inc. and the many thousands of firms like us who will be affected by your decision.

STATEMENT OF THE PROCTER & GAMBLE DISTRIBUTING CO.

The Procter & Gamble Distributing Company appreciates the opportunity to submit comments concerning the impact of The Motor Carrier Act of 1980.

The Procter & Gamble Distributing Company (hereinafter P&G) distributes a broad range of consumer and industrial commodities throughout the United States.

The distribution system is complex, involving some 50 production facilities and a large number of warehousing points, all both receiving and shipping freight. While all modes of transportation are utilized, motor carriages, accounting for about 70 percent of P&G's total freight bill, dominates.

P&G strongly supports economic deregulation of transportation. It has long been our corporate view that competition in an open market is a more effective and efficient long term incentive and controller of activities than government-developed rules and regulations. We support the passage of The Motor Carrier Act of 1980 and are convinced that the results and improvements to the distribution system prove without doubt that the changes made at that time were directionally correct.

Since 1980, there has been a dramatic change in the mix of carriers that support our business. There has been a decline in the total number, from 2,100 to 850, as authorities have been expanded. These 850 can consolidate business to achieve operational efficiency and reduce empty miles traveled where general interstate traffic is involved. While we certainly do not see change in and of itself to be a benefit, it is obvious to us that the companies that are participating in our business today are those who are innovative, aggressive, and efficient. Service being provided to us in terms of transit time and reliability is better than at any time in the past.

As far as costs are concerned, our freight bills on a per unit basis declined by about 15 percent through 1984.

The language of the legislation authorizing backhaul in the food industry has also had very positive results. Today, P&G's customer, as a group, represents our largest volume motor carrier, picking up in excess of 15 percent of our finished product volume. Earlier in the hearings, the Food Marketing Institute testified that food distributors had saved a total of $460MM through the end of 1983 from backhauling, and these savings are being passed on to consumers.

It is P&G's conclusion that the benefits resulting from passage of The Motor Carrier Act of 1980 are most significant and are in keeping with the intent of Congress to increase competition and encourage efficiency in the trucking industry.

While, as stated above, we view the effects of motor carrier deregulation up to this time as positive, there are impediments preventing total realization that now need to be considered and eliminated. These impediments are state authority and procedural requirements, state restrictions on access of large trailers, the limitation of backhaul to food retailers, and continuing administrative burdens.

1. *State authority and procedural requirements.*—Refusal of states to grant new operating authority to carriers primarily involved in interstate operations are forcing such carriers to unnecessarily travel empty mileage to reposition equipment. Costs are inflated and energy wasted. There are instances where interstate carriers simply do not operate into some areas of the country. Due to the lack of backhaul. Actual examples that have been called to our attention by carriers are:

(a) A carrier hauls potato chips into New Orleans. Even though outbound intrastate freight is available, this carrier must travel empty to Alexandria, LA, to pick up other interstate tonnage to return North. A recent costly effort to obtain Louisiana intrastate authority failed when a single intrastate carrier protested.

(b) A carrier hauls various commodities from California to San Antonio, TX. Equipment must be moved empty to Dallas for outbound loads. Filing to obtain intrastate Texas authority was discussed, however, based on the unsuccessful experiences of others and advice of attorneys, it was decided that pursuit was pointless.

(c) Records of another carrier show that each trailer delivering in Texas must travel an average of 243 empty miles to obtain a next load and that inbound interstate shipments are assessed a premium of 5¢ per mile on the total movement to cover this repositioning. Our own records show that inbound Texas rates generally range from $150 to $400 per trailer higher than outbound for the same distance. Specific examples are shown on Exhibit I.

Many other examples are available. In addition to authority difficulties, procedures required by some state regulatory agencies are burdensome and wasteful. For example, California requires that any proposed rate which varies from prescribed structures and minimum levels must be justified in voluminous detail. One trucking company has told us that a recent case involving one origin and one destination took nine months to complete and required evidence weighing 60 lbs.

P&G must conclude that, if full rationalization of the national motor carrier system is to be realized, and if maximum efficiency and consumer benefit is to be achieved, then Congress must limit state control. One approach to this problem has been proposed in H.R. 3222, The Motor Carrier Productivity and Safety Improvement Act, by creating a new class of national carriers. Such carriers, primarily operating on an interstate basis, would not be subject to state economic jurisdiction. For the reason cited above, we strongly support this concept.

2. *Access of large trailers.*—P&G realizes that this hearing deals with primarily with The Motor Carrier Act of 1980, while trailers 48' in length and the concept of a single system of highways over which such trailers could travel was created by The Surface Transportation Assistance Act of 1982. However, improved efficiency of equipment must be an integral part of the process if transportation productivity is to be maximized. Today, some states continue to find ways to prevent pickup and delivery off the interstate system. California, for one, has attempted to establish a controversial equipment measurement referred to as the kingpin setting distance, and has suggested a model law to local communities which would require receivers of freight to pay the cost of any changes and improvements to involved highways associated with larger equipment. The kingpin setting issue is now the subject of litigation, and enforcement has been enjoined. Apparently, if such ill-conceived impediments are to be controlled, it will be necessary for Congress to further define the national highway network and access to and from that network.

3. *Limitation of backhaul.*—The success of the backhaul authorization of The Motor Carrier Act of 1980 now appears to be generally recognized. As stated above, there has been testimony before this committee that savings to the food industry through 1983 totalling $460MM and that annual activity is still growing. Given this most favorable precedent, P&G now urges that additional legislation be passed to expand the authorization to all commodities. We are convinced that similar savings are available and that, while direct consumer sales may not be involved, competition among industries directly benefiting will cause these savings to be passed on.

4. *Administrative burdens.*—P&G now retains some 400 lineal feet of rate tariffs needed to properly audit and pay freight bills. Thirty-five technicians spend a significant portion of their time attempting to research, update, and interpret these volumes. In spite of this effort, confusion and disagreements persist due to the complexity of the documents. Computerization, rapidly becoming a necessity if shippers are to remain competitive, is limited, again due to complexity of the tariffs. It is time that the significant operating improvements made possible by reforms of The Motor Carrier Act of 1980 be allowed to expand to administrative matters and that tariffs, their usefulness declining in any event, be eliminated to be replaced by simple price lists and contracts.

Recognizing the need for administrative relief, P&G has developed and is implementing a rate simplification program. Carriers first convert to contracts to avoid tariff formats, and a rate structure based on Freight All Kinds, single per trailer charges, zip code-to-zip code, is then put into effect. Accessorial charges are per shipment and are simple additions to the basic line haul rates. Less Than Truckload shipments are priced using a simple two-tier structure. Our experience to date shows that freight bill preparation and payment are more efficient, errors are reduced, and computer application for data interchange is easily developed.

While the new P&G system has rapidly expanded where interstate activity is involved, individual states are restricting, or even preventing, progress. Some states do not authorize contracts; some require that all prices be published to provide for objection from interested parties; some will only allow the use of specified rate formats; and some conduct lengthy and costly investigations when innovation is suggested. The result of such state activity is the creation of a number of exceptions to the rate simplification program. If many of these exceptions persist, the benefit of the simplification effort will not be realized, and the whole shceme of tariffs, protests, litigation, and inefficiency will continue, ad infinitum.

CONCLUSION

P&G supports The Motor Carrier Act of 1980, and has seen real benefit to our distribution system. Service has improved, and costs reduced through more efficient operation. These cost benefits have, in large part, been passed on to consumers. Now it is time to carry the process to completion by further economic deregulation of interstate carriers, expansion of backhaul authorization, and elimination of remaining state impediments to interstate efficiency. Specifically, these impediments involve:

1. Intrastate authority requirements which create empty mileage and increased costs.

2. Unreasonable access requirements which prevent full use of highway trailers authorized by STAA-82.

3. Intrastate procedural and tariff requirements which prevent expansion and create exceptions to mechanization and simplification initiatives.

COMPARISON OF FREIGHT RATES

	Dallas	El Paso	Houston	Lubbock	San Antonio
Kansas City, KS:					
Inbound rates	$720	$1,377	$1,044	$900	$1,121
Outbound rates	437	1,095	831	779	890
Ivorydale, OH (Cincinnati):					
Inbound rates	1,328	1,935	1,575	1,319	1,634
Outbound rates	891	1,705	1,157	1,331	1,310
Cape Girardeau, MO:					
Inbound rates	874	1,850	1,126	1,110	1,318
Outbound rates	664	1,361	788	995	935
Albany, GA:					
Inbound rates	1,036	N/A	1,006	1,344	1,248
Outbound rates	906	N/A	830	1,265	1,047

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